

United States
Circuit Court of Appeals
For the Ninth Circuit.

THLINKET PACKING COMPANY, a Corpora-
tion,

Plaintiff in Error,

VS.

THE UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writs of Error to the United States District
Court of the District of Alaska, Division No. 1.

Filed

AUG 20 1915

F. D. Monckton,
Clerk.

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Circuit Court of Appeals

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1034-B.

UNITED STATES OF AMERICA,
Plaintiff and Defendant in Error,
vs.

THLINKET PACKING COMPANY,
Defendant and Plaintiff in Error.

No. 1035-B.

UNITED STATES OF AMERICA,
Plaintiff and Defendant in Error,
vs.

THLINKET PACKING COMPANY,
Defendant and Plaintiff in Error.

No. 1036-B.

UNITED STATES OF AMERICA,
Plaintiff and Defendant in Error,
vs.

THLINKET PACKING COMPANY,
Defendant and Plaintiff in Error.

[Names and Addresses of Attorneys of Record.]

UNITED STATES DISTRICT ATTORNEY,
Attorney for Plaintiff and Defendant in Error,
Juneau, Alaska.

WINN & BURTON,
Attorneys for Defendant and Plaintiff in Error,
Juneau, Alaska.

[Indictment in Case No. 1034-B.]

*District Court for the District of Alaska, Division
Number One, Held at Juneau.*

No. 1034-B.

UNITED STATES OF AMERICA

vs.

THLINKET PACKING COMPANY, a Corpora-
tion.

Section 5, Act of June 26, 1906, entitled An Act for
the Protection and Regulation of the Fisheries
of Alaska.

At the Special August term of the District Court
of the United States of America, within and for the
District of Alaska, in the year of our Lord one
thousand nine hundred and fourteen, begun and held
at Juneau, in said District beginning August 17th,
A. D. 1914.

The Grand Jurors of the United States of Amer-
ica, selected, empaneled, sworn, and charged within
and for the District of Alaska, Division Number One
thereof, accuse the Thlinket Packing Company, a
corporation, by this indictment of the crime of un-
lawful fishing, committed as follows:

COUNT ONE.

The Grand Jurors aforesaid, upon their oaths
aforesaid, do present, that the said Thlinket Packing
Company, a corporation then and there organized
and existing as such, between the hours of six o'clock
post-meridian on Saturday, July 11, 1914, and six
o'clock ante-meridian on Monday, July 13, 1914, to

wit, on Sunday, July 12, 1914, in the waters of Icy Straits, near the mainland, abreast of Porpoise Island, Excursion Inlet, the same being waters of Alaska over which the United States has jurisdiction, and in the First Division of the said District of Alaska, and within the jurisdiction of this Court, did unlawfully and wrongfully maintain and operate for fishing a certain trap, known and designated as "T. P. Co. No. 1," without having twenty-five feet of the webbing or net of the heart of such trap on each side next to the pot thereof lifted or lowered in such manner as to permit the free passage of salmon and other fishes. [1*]

And so the Grand Jurors duly selected, empaneled, sworn, and charged as aforesaid, upon their oaths do say: That the Thlinket Packing Company, a corporation, did then and there commit the crime of unlawful fishing, in the manner and form aforesaid, contrary to the form of statute in such cases made and provided, and against the peace and dignity of the United States of America.

COUNT TWO.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that the said Thlinket Packing Company, a corporation then and there organized and existing as such, between the hours of six o'clock post-meridian on Saturday, the 11th day of July, 1914, and six o'clock ante-meridian on Monday, the 13th day of July, 1914, to wit, on Sunday, July 12, 1914, in the waters of Icy Straits, near mainland, abreast of Porpoise Island, Excursion Inlet,

*Page-number appearing at foot of page of original certified Transcript of Record.

the same being waters of Alaska over which the United States has jurisdiction, and in the First Division of said District of Alaska, and within the jurisdiction of this Court, did unlawfully and wrongfully maintain and operate for fishing a certain trap, known and designated as "T. P. Co. No. 2," without having twenty-five feet of the webbing or net of the heart of such trap on each side next to the pot thereof lifted or lowered in such manner as to permit the free passage of salmon and other fishes.

And so the Grand Jurors duly selected, empaneled, sworn, and charged as aforesaid, upon their oaths do say: That the Thlinket Packing Company, a corporation, did then and there commit the crime of unlawful fishing, in the manner and form aforesaid, contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the United States of America. [2]

COUNT THREE.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that the Thlinket Packing Company, a corporation then and there organized and existing as such, between the hours of six o'clock post-meridian on Saturday, the 11th day of July, 1914, and six o'clock ante-meridian on Monday, the 13th day of July, to wit, on Sunday, July 12, 1914, in the waters of Icy Straits, near the mainland, southeast of Porpoise Island, Excursion Inlet, the same being waters of Alaska over which the United States has jurisdiction, and in the First Division of said District of Alaska, and within the jurisdiction of this Court, did unlawfully and wrong-

fully maintain and operate for fishing a certain trap, known and designated as "T. P. Co. No. 3," without having twenty-five feet of webbing or net of the heart of such trap on each side next to the pot thereof lifted or lowered in such manner as to permit the free passage of salmon and other fishes.

And so the Grand Jurors duly selected, empaneled, sworn, and charged as aforesaid, upon their oaths do say, that the Thlinket Packing Company, a corporation, did then and there commit the crime of unlawful fishing, in the manner and form aforesaid, contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the United States of America. [3]

COUNT FOUR.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that the said Thlinket Packing Company, a corporation then and there organized and existing as such, between the hours of six o'clock post-meridian on Saturday, the 11th day of July, 1914, and six o'clock ante-meridian on Monday, the 13th day of July, 1914, to wit, on Sunday, July 12, 1914, in the waters of Icy Straits, near the mainland, southeast of Porpoise Island, the same being waters of Alaska over which the United States has jurisdiction, and in the First Division of said District of Alaska, and within the jurisdiction of this Court, did unlawfully and wrongfully maintain and operate for fishing a certain trap, known and designated as "T. P. Co. No. 4," without having the tunnel of such trap closed and without having twenty-five feet of the webbing or net of the heart of such

trap on each side next to the pot thereof lifted or lowered in such manner as to permit the free passage of salmon and other fishes.

And so the Grand Jury duly selected, empaneled, sworn, and charged as aforesaid, upon their oaths do say: That the Thlinket Packing Company, a corporation, did then and there commit the crime of unlawful fishing, in the manner and form aforesaid, contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the United States of America. [4]

COUNT FIVE.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that the said Thlinket Packing Company, a corporation then and there organized and existing as such, between the hours of six o'clock post-meridian on Saturday, the 11th day of July, 1914, and six o'clock ante-meridian on Monday, the 13th day of July, 1914, to wit, on Sunday, July 12, 1914, in the waters of Icy Straits, mainland shore north of The Sisters, the same being waters of Alaska over which the United States has jurisdiction, and in the First Division of said District of Alaska, and within the jurisdiction of this Court, did unlawfully and wrongfully maintain and operate for fishing a certain trap, known and designated as "T. P. Co. No. 5," without having the tunnel of such trap closed and without having twenty-five feet of the webbing or net of the heart of such trap on each side next to the pot thereof lifted or lowered in such manner as to permit the free passage of salmon and other fishes.

And so the Grand Jurors duly selected, empan-

eled, sworn, and charged as aforesaid, upon their oaths do say, that the Thlinket Packing Company, a corporation, did then and there commit the crime of unlawful fishing, in the manner and form aforesaid, contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the United States of America. [5]

COUNT SIX.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that the said Thlinket Packing Company, a corporation, then and there organized and existing as such, between the hours of six o'clock post-meridian on Saturday, the 11th day of July, 1914, and six o'clock ante-meridian on Monday, the 13th day of July, 1914, to wit, on Sunday, July 12, 1914, in the waters of Icy Straits, off the mainland near Ansley Island, the same being waters of Alaska over which the United States has jurisdiction, and in the First Division of said District of Alaska, and within the jurisdiction of this court, did unlawfully and wrongfully maintain and operate for fishing a certain trap, known and designated as "T. P. Co. No. 6," without having the tunnel of such trap closed and without having twenty-five feet of the webbing or net of the heart of such trap on each side next to the pot thereof lifted or lowered in such manner as to permit the free passage of salmon and other fishes.

And so the Grand Jurors duly selected, empaneled, sworn, and charged as aforesaid, upon their oaths do say: that the Thlinket Packing Company, a corporation, did then and there commit the crime

of unlawful fishing, in the manner and form aforesaid, contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the United States of America.

JNO. J. REAGAN,

United States Attorney. [6]

Presented by L. H. Keist, Foreman of the Grand Jury, in the presence of the Grand Jury, in open court, and filed in open court with the clerk of the District Court, all on this 1st day of September, 1914.

J. W. BELL,

Clerk of the District Court, Dist. of Alaska, Division
No. 1.

By J. T. Reed,
Deputy.

Witnesses:

ERNEST P. WALKER.

[Endorsed]: No. 1034-B. United States District Court, District of Alaska, First Division. The United States of America vs. Thlinket Packing Company, a Corporation. Indictment. Unlawful Fishing. Section 5, Act of June 26, 1906. A True Bill. L. H. Keist, Foreman. Filed this 1st day of September, A. D. 1914. J. W. Bell, Clerk. By J. T. Reed, Deputy. [7]

*In the District Court for the District of Alaska,
Division Number One.*

No. 1034-B.

UNITED STATES OF AMERICA

vs.

THLINKET PACKING COMPANY, a Corpora-
tion.

Summons [in Case No. 1034-B].

To Thlinket Packing Company, a Corporation, De-
fendant:

An indictment having been duly found and filed in the above-entitled court, at Juneau, on the first day of September, 1914, charging you, Thlinket Packing Corporation, with the crime of unlawful fishing, you, the said Thlinket Packing Company, a corporation, are hereby commanded to be and appear in the above-entitled court holden at Juneau, in said Division of said District, in the courtroom thereof, on the 14th day of September, 1914, and enter your plea to the said indictment.

And you, the United States Marshal of Division Number One of the District of Alaska, or any deputy, are hereby required forthwith to notify said Thlinket Packing Company, a corporation, of said indictment and to make service of this Summons upon the said defendant as required by law, and you will make due return hereof to the clerk of this court within fifteen days from the date of delivery to you, with an endorsement hereon of your doings in the premises.

IN WITNESS WHEREOF, I have hereto set my hand and caused to be affixed hereto the seal of the above Court this third day of September, 1914. [Seal of District Court for the District of Alaska, Div. No. 1.]

ROBERT W. JENNINGS,
Judge of Said Court. [8]

[Indictment in Case No. 1035-B.]

*District Court for the District of Alaska, Division
No. One, Held at Juneau.*

No. 1035-B.

UNITED STATES OF AMERICA

vs.

THLINKET PACKING COMPANY, a Corpora-
tion.

Section 5, Act of June 26, 1906, Entitled, An Act
for the Protection and Regulation of the Fish-
eries of Alaska.

At the special August term of the District Court of the United States of America, within and for the District of Alaska, in the year of our Lord one thousand nine hundred and fourteen, begun and held at Juneau, in said District beginning August 17th, A. D. 1914.

The Grand Jurors of the United States of America, selected, empaneled, sworn, and charged within and for the District of Alaska, Division Number One thereof, accuse the Thlinket Packing Company, a corporation, by this indictment of the crime of unlawful fishing, committed as follows:

COUNT ONE.

The Grand Jurors aforesaid, upon their oaths aforesaid, do present, that the said Thlinket Packing Company, a corporation then and there organized and existing as such, between the hours of six o'clock post-meridian on Saturday, August 8, 1914, and six o'clock ante-meridian on Monday, August 10, 1914, to wit, Saturday, the 8th day of August 1914, in the waters of Chatham Straits, west shore Admiralty Island, north of Funtier Bay, the same being waters of Alaska over which the United States has jurisdiction, and in the First Division of the said District of Alaska, and within the jurisdiction of this court, did unlawfully and wrongfully maintain and operate for fishing, a certain trap, known and designated as "T. P. Co. No. 11," without having twenty-five feet of the webbing or net of the heart of such trap on each side next to the pot thereof lifted or lowered in such manner as to permit the free passage of salmon and other fishes. [9]

And so the Grand Jurors duly selected, empaneled, sworn, and charged as aforesaid, upon their oaths do say: That the Thlinket Packing Company, a corporation, did then and there commit the crime of unlawful fishing, in the manner and form aforesaid, contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the United States of America.

COUNT TWO.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present: That the said Thlinket Packing Company, a corporation then and there

organized and existing as such, between the hours of six o'clock post-meridian on Saturday, the 8th day of August, 1914, and six o'clock ante-meridian on Monday, the 10th day of August, 1914, to wit, on Saturday, August 8, 1914, in the waters of Lynn Canal, west shore of Admiralty Island, south of Point Retreat, the same being waters of Alaska over which the United States has jurisdiction, and in the First Division of said District of Alaska, and within the jurisdiction of this court, did unlawfully and wrongfully maintain and operate for fishing a certain trap, known and designated as "T. P. Co. No. 12," without having twenty-five feet of the webbing or net of the heart of such trap on each side next to the pot thereof lifted or lowered in such manner as to permit the free passage of salmon and other fishes.

And so the Grand Jurors duly selected, empaneled, sworn, and charged as aforesaid, upon their oaths do say; that the Thlinket Packing Company, a corporation, did then and there commit the crime of unlawful fishing, in the manner and form aforesaid, contrary to the form of the statutes in such cases [10] made and provided, and against the peace and dignity of the United States of America.

JNO. J. REAGAN,

United States Attorney. [11]

Presented by L. H. Keist, Foreman of the Grand Jury, in the presence of the Grand Jury, in open court and filed in open court with the clerk of the

District Court, all on this 1st day of September, 1914.

J. W. BELL,
Clerk of District Court, Dist. of Alaska, Division
No. 1.

By J. T. Reed,
Deputy.

Witnesses:

ERNEST P. WALKER.

[Endorsed]: Copy. No. 1035-B. United States District Court, District of Alaska, First Division. The United States of America vs. Thlinket Packing Company, a Corporation. Indictment. Unlawful Fishing. Section 5, Act of June 26, 1906. A True Bill. L. H. Keist, Foreman. Filed this 1st day of September, A. D. 1914. J. W. Bell, Clerk. By J. T. Reed, Deputy. [12]

*In the District Court for the District of Alaska,
Division Number One.*

No. 1035-B.

UNITED STATES OF AMERICA,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion.

Summons [in Case No. 1035-B].

To Thlinket Packing Company, a Corporation, De-
fendant:

An indictment having been found and filed in the
above-entitled court, at Juneau, on the first day of

September, 1914, charging you, Thlinket Packing Company, a corporation, with the crime of unlawful fishing, you, the said Thlinket Packing Company, a corporation, are hereby commanded to be and appear in the above-entitled court holden at Juneau, in said Division of said District, in the courtroom thereof, on the 14th day of September, 1914, and enter your plea to the said indictment.

And you, the United States Marshal of Division Number One of the District of Alaska, or any deputy, are hereby required forthwith to notify said Thlinket Packing Company, a corporation, of said indictment and to make service of this Summons upon the said defendant as required by law, and you will make due return hereof to the clerk of this court within fifteen days from the date of delivery to you, with an endorsement hereon of your doings in the premises.

IN WITNESS WHEREOF, I have hereto set my hand and caused to be affixed hereto the seal of the above Court this third day of September, 1914.

[Seal of District Court for the District of Alaska,
Div. No. 1.]

ROBERT W. JENNINGS,
Judge of said Court. [13]

[Indictment in Case No. 1036-B.]

*District Court for the District of Alaska, Division
Number One, Held at Juneau.*

No. 1036-B.

UNITED STATES OF AMERICA

vs.

THLINKET PACKING COMPANY, a Corpora-
tion.

Section 5, Act of June 26, 1906, Entitled, An Act
for the Protection and Regulation of the Fish-
eries of Alaska.

At the Special August term of the District Court
of the United States of America, within and for the
District of Alaska, in the year of our Lord one
Thousand nine hundred and fourteen, begun and
held at Juneau, in said District beginning August
17th, A. D. 1914.

The Grand Jurors of the United States of
America, selected, empaneled, sworn, and charged
within and for the District of Alaska, Division
Number One thereof, accuse the Thlinket Packing
Company, a corporation, by this indictment of the
crime of unlawful fishing, committed as follows:

COUNT ONE.

The Grand Jurors aforesaid, upon their oaths
aforesaid, do present, that the said Thlinket Pack-
ing Company, a corporation then and there organ-
ized and existing as such, between the hours of six
o'clock post-meridian on Saturday, August 8, 1914,

and six o'clock ante-meridian on Monday, August 10, 1914, to wit, Sunday, the 9th day of August, 1914, in the waters Icy Straits, near the mainland, abreast of Porpoise Island, Excursion Inlet, the same being waters of Alaska over which the United States has jurisdiction, and in the First Division of the said District of Alaska, and within the jurisdiction of this Court, did unlawfully and wrongfully maintain and operate for fishing a certain trap, known and designated as "T. P. Co. No. 1," without having the tunnel of said trap closed and without having twenty-five feet of the webbing or net of the heart of such trap on each side next to the pot thereof lifted or lowered in such manner as to permit of the free passage of salmon and other fishes.

[14]

And so the Grand Jurors duly selected, empaneled, sworn, and charged as aforesaid, upon their oaths do say: That the Thlinket Packing Company, a corporation, did then and there commit the crime of unlawful fishing, in the manner and form aforesaid, contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the United States of America.

COUNT TWO.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present; that the said Thlinket Packing Company, a corporation then and there organized and existing as such, between the hours of six o'clock post-meridian on Saturday, the 8th day of August, 1914, and six o'clock ante-meridian on Monday, the 10th day of August, 1914, to wit, on

Sunday, August 9th, 1914, in the waters of Icy Straits, near mainland, abreast of Porpoise Island, Excursion Inlet, the same being waters of Alaska over which the United States has jurisdiction, and in the First Division of said District of Alaska, and within the jurisdiction of this Court, did unlawfully and wrongfully maintain and operate for fishing a certain trap, known and designated as "T. P. Co. No. 2," without having the tunnel of said trap closed and without having twenty-five feet of the webbing or net of the heart of such trap on each side next to the pot thereof lifted or lowered in such manner as to permit the free passage of salmon and other fishes.

And so the Grand Jurors duly selected, empaneled, sworn, and charged as aforesaid, upon their oaths do say, that the Thlinket Company, a corporation, did then and there commit the crime of unlawful fishing, in the manner and form aforesaid, contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the United States of America. [15]

COUNT THREE.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that the said Thlinket Packing Company, a corporation then and there organized and existing as such, between the hours of six o'clock post-meridian on Saturday, the 8th day of August, 1914, and six o'clock ante-meridian on Monday, the 10th day of August, 1914, to wit, on Sunday, August 9th, 1914 in the waters of Icy Straits, near mainland, south east of Porpoise Island, Excursion Inlet, the same being waters

of Alaska over which the United States has jurisdiction, and in the First Division of said District of Alaska, and within the jurisdiction of this Court, did unlawfully and wrongfully maintain and operate for fishing a certain trap, known and designated as "T. P. Co. No. 3," without having the tunnel of said trap closed and without having twenty-five feet of the webbing or net of the heart of such trap on each side next to the pot thereof lifted or lowered in such manner as to permit the free passage of salmon and other fishes.

And so the Grand Jurors duly selected, empaneled, sworn, and charged as aforesaid, upon their oaths do say, that the Thlinket Packing Company, a corporation, did then and there commit the crime of unlawful fishing, in the manner and form aforesaid, contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the United States of America. [16]

COUNT FOUR.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that the said Thlinket Packing Company, a corporation then and there organized and existing as such, between the hours of six o'clock post-meridian on Saturday, the 8th day of August, 1914, and six o'clock ante-meridian on Monday, the 10th day of August, 1914, to wit, on Sunday, August 9th, 1914, in the waters of Icy Straits near the mainland, southeast of Porpoise Island, Excursion Inlet, the same being waters of Alaska over which the United States has jurisdiction, and in the First Division of said District of Alaska, and

within the jurisdiction of this Court, did unlawfully and wrongfully maintain and operate for fishing a certain trap, known and designated as "T. P. Co. No. 3A," without having the tunnel of said trap closed and without having twenty-five feet of the webbing or net of the heart of such trap on each side next to the pot thereof lifted or lowered in such manner as to permit the free passage of salmon and other fishes.

And so the Grand Jurors duly selected, empaneled, sworn, and charged as aforesaid, upon their oaths do say, that the Thlinket Packing Company, a corporation, did then and there commit the crime of unlawful fishing, in the manner and form aforesaid, contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the United States of America. [17]

COUNT FIVE.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that the said Thlinket Packing Company, a corporation then and there organized and existing as such, between the hours of six o'clock post-meridian on Saturday, the 8th day of August, 1914, and six o'clock ante-meridian on Monday, the 10th day of August, 1914, to wit, on Sunday, August 9, 1914, in the waters of Icy Straits, near the mainland, southeast of Porpoise Island, Excursion Inlet, the same being waters of Alaska over which the United States has jurisdiction, and in the First Division of said District of Alaska, and within the jurisdiction of this Court, did unlawfully and wrongfully maintain and operate for

fishing a certain trap, known and designated as "T. P. Co. No. 4," without having the tunnel of said trap closed and without having twenty-five feet of the webbing or net of the heart of such trap on each side next to the pot thereof lifted or lowered in such manner as to permit the free passage of salmon and other fishes.

And so the Grand Jurors duly selected, empaneled, sworn, and charged as aforesaid, upon their oaths do say: That the Thlinket Packing Company, a corporation, did then and there commit the crime of unlawful fishing, in the manner and form aforesaid, contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the United States of America. [18]

COUNT SIX.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that the said Thlinket Packing Company, a corporation then and there organized and existing as such, between the hours of six o'clock post-meridian on Saturday, the 8th day of August, 1914, and six o'clock ante-meridian on Monday, the 10th day of August, 1914, to wit, on Sunday, August 9, 1914, in the waters of Icy Straits, off the mainland, near Ansley Island, the same being waters of Alaska over which the United States has jurisdiction, and in the First Division of said District of Alaska, and within the jurisdiction of this Court, did unlawfully and wrongfully maintain and operate for fishing a certain trap, known and designated as "T. P. Co. No. 6," without having the tunnel of such trap closed and without having

twenty-five feet of the webbing or net of the heart of such trap on each side next to the pot thereof lifted or lowered in such manner as to permit the free passage of salmon and other fishes.

And so the Grand Jurors duly selected, empaneled, sworn, and charged as aforesaid, upon their oaths do say, that the Thlinket Packing Company, a corporation, did then and there commit the crime of unlawful fishing, in the manner and form aforesaid, contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the United States of America. [19]

COUNT SEVEN.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that the said Thlinket Packing Company, a corporation then and there organized and existing as such, between the hours of six o'clock post-meridian on Saturday, the 8th day of August, 1914, and six o'clock ante-meridian on Monday, the 10th day of August, 1914, to wit, on Sunday, August 9, 1914, in the waters of Icy Straits off Entrance Island, near Point Couverden, the same being waters of Alaska over which the United States has jurisdiction, and in the First Division of said District of Alaska, and within the jurisdiction of this Court, did unlawfully and wrongfully maintain and operate for fishing a certain trap, known and designated as "T. P. Co. No. 9," without having the tunnel of such trap closed and without having twenty-five feet of the webbing or net of the heart of such trap on each side next to the pot thereof lifted or lowered in such

manner as to permit the free passage of salmon and other fishes.

And so the Grand Jurors duly selected, empaneled, sworn, and charged as aforesaid, upon their oaths do say, that the Thlinket Packing Company, a corporation, did then and there commit the crime of unlawful fishing, in the manner and form aforesaid, contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the United States of America.

JNO. J. REAGAN,

United States Attorney. [20]

[Endorsed]: Copy. No.1036-B. United States District Court, District of Alaska, First Division. The United States of America vs. Thlinket Packing Company, a Corporation. Indictment. Unlawful Fishing. Section 5, Act of June 26, 1906. A true bill. L. H. Keist, Foreman. Filed this 1st day of September, A. D. 1914. J. W. Bell, Clerk. By J. T. Reed, Deputy.

Presented by L. H. Keist, Foreman of the Grand Jury, in the presence of the Grand Jury, in open Court and filed in open Court with the Clerk of the District Court, all on this 1st day of September, 1914.

J. W. BELL,

Clerk of District Court, Dist. of Alaska Division,
No. 1.

By J. T. Reed,
Deputy.

Witnesses:

ERNEST P. WALKER. [21]

*In the District Court for the District of Alaska,
Division Number One.*

No. 1036-B.

UNITED STATES OF AMERICA

vs.

THLINKET PACKING COMPANY, a Corpora-
tion.

Summons [in Case No. 1036-B].

To Thlinket Packing Company, a Corporation, De-
fendant:

An indictment having been duly found and filed in the above-entitled court, at Juneau, on the first day of September, 1914, charging you, Thlinket Packing Company, a corporation, with the crime of unlawful fishing, you, the said Thlinket Packing Company, a corporation, are hereby commanded to be and appear in the above-entitled court holden at Juneau, in said Division of said District, in the courtroom thereof, on the 14th day of September, 1914, and enter your plea to the said indictment.

And you, the United States Marshall of Division Number One of the District of Alaska, or any deputy, are hereby required forthwith to notify said Thlinket Packing Company, a corporation, of said indictment and to make service of this Summons upon the said defendant as required by law, and you will make due return hereof to the clerk of this court within fifteen days from the date of delivery to you, with an endorsement hereon of your doings in the premises.

IN WITNESS WHEREOF, I have hereto set my hand and caused to be affixed hereto the seal of the above court this third day of September, 1914.

[Seal of District Court for the District of Alaska,

Div. No. 1.]

ROBERT W. JENNINGS,

Judge of said Court. [22]

[Demurrer to Indictment in Case No. 1034-A.]

*District Court for the District of Alaska, Division
Number One, Held at Juneau.*

No. 1034-A.

UNITED STATES OF AMERICA

vs.

THLINKET PACKING COMPANY, a Corporation.

Comes now the above-named defendant, Thlinket Packing Company, a corporation, by its attorneys, Winn and Burton, and demurs to the indictment on file in the above-entitled court in the above-entitled cause, and for cause of demurrer states as follows:

I.

That more than one crime is charged in said indictment against the defendant corporation.

II.

That said indictment does not state facts sufficient to constitute any crime against said defendant corporation.

III.

Without waiving any of the above and foregoing

grounds and causes for demurrer to the whole indictment, this defendant, by its attorneys, Winn and Burton, specially demurs to count one of said indictment on the following grounds and for the following reasons:

a. That the facts stated in said count do not constitute a crime against said defendant company. The mere statement in said count that the said defendant company did unlawfully and wrongfully maintain and operate for fishing a certain trap * * * * without having twenty-five feet of the webbing or net of the heart of said trap on each side next to the pot thereof lifted or lowered in such manner as to permit the free passage of salmon and other fishes, does not state or charge any offense or crime against the said defendant.

b. That said charge in said count is duplicitous and ambiguous and attempts to charge two crimes, and does not substantially conform with the requirements of chapter 7 of the Compiled Laws of the Territory of Alaska, being subdivision two of section [23] 2147 of the said Compiled Laws of the Territory of Alaska in that the statement of facts in said count one, and the other part of the indictment referring to count one, is not stated in such a manner as to enable a person of common understanding to know what is intended thereby, or what crime, if any, is attempted or intended to be charged.

IV.

Without waiving any of the above and foregoing grounds and causes for demurrer to the whole indictment, this defendant, by its attorneys, Winn and

Burton, specially demurs to count two of said indictment on the following grounds and for the following reasons :

a. That the facts stated in said count do not constitute a crime against the said defendant company. The mere statement in said count that the said defendant company did unlawfully and wrongfully maintain and operate for fishing a certain trap * * * * without having twenty-five feet of the webbing or net of the heart of said trap on each side next to the pot thereof lifted or lowered in such manner as to permit the free passage of salmon and other fishes, does not state or charge any offense or crime against the said defendant.

b. That said charge in said count is duplicitous and ambiguous and attempts to charge two crimes and does not substantially conform with the requirements of chapter 7 of the Compiled Laws of the Territory of Alaska, being subdivision two of Section 2147 of the said Compiled Laws of the Territory of Alaska, in that the statement of facts in said count two, and the other part of the indictment referring to count two, is not stated in such a manner as to enable a person of common understanding to know what is intended thereby, or what crime, if any, is attempted or intended to be charged.

V.

Without waiving any of the above and foregoing grounds and causes for demurrer to the whole indictment, this defendant, by its [24] attorneys, Winn and Burton, specially demurs to count three of said indictment on the following grounds and for

the following reasons:

a. That the facts stated in said count do not constitute a crime against the said defendant company. The mere statement in said count that the said defendant company did unlawfully and wrongfully maintain and operate for fishing a certain trap * * * * without having twenty-five feet of the webbing or net of the heart of said trap on each side next to the pot thereof lifted or lowered in such manner as to permit the free passage of salmon and other fishes, does not state or charge any offense or crime against the said defendant.

b. That said charge in said count is duplicitous and ambiguous and attempts to charge two crimes, and does not substantially conform with the requirements of chapter 7 of the Compiled Laws of the Territory of Alaska, being subdivision two of section 2147 of the said Compiled Laws of the Territory of Alaska, in that the statement of facts in said count three, and the other part of the indictment referring to count three, is not stated in such a manner as to enable a person of common understanding to know what is intended thereby, or what crime, if any, is attempted or intended to be charged.

VI.

Without waiving any of the above and foregoing grounds and causes for demurrer to the whole indictment, this defendant, by its attorneys, Winn and Burton specially demurs to count four of said indictment on the following grounds and for the following reasons:

a. That more than one crime is charged in said

indictment against the defendant corporation.

b. That the facts stated in said count do not constitute or charge a crime against the said defendant company in that stating that said defendant did unlawfully and wrongfully maintain and operate for fishing the trap referred to therein without having the [25] tunnel of such trap closed, and without having 25 feet of the webbing or net of the heart of such trap on each side next to the pot thereof lifted or lowered in such a manner as to permit the free passage of salmon and other fishes, does not charge any crime whatsoever.

c. That said charge in said count is duplicitous and ambiguous and attempts to charge three crimes and does not substantially conform with the requirements of chapter 7 of the Compiled Laws of the Territory of Alaska, being subdivision two of section 2147 of the said Compiled Laws in that the statement of facts in said count four and the other part of the indictment referring to said count is not stated in such a manner as to enable a person of common understanding to know what is intended thereby or what crime, if any, is attempted or intended to be charged.

VII.

Without waiving any of the above and foregoing grounds and causes for demurrer to the whole indictment, this defendant, by its attorneys, Winn & Burton, specially demurs to count five of said indictment on the following grounds and for the following reasons:

a. That more than one crime is charged in said indictment against the defendant corporation.

b. That the facts stated in said count do not constitute or charge a crime against the said defendant company in that stating that said defendant did unlawfully and wrongfully maintain and operate for fishing the trap referred to therein without having the tunnel of such trap closed, and without having 25 feet of the webbing or net of the heart of such trap on each side next to the pot thereof lifted or lowered in such a manner as to permit the free passage of salmon and other fishes, does not charge any crime whatsoever.

c. That said charge in said count is duplicitous and ambiguous and attempts to charge three crimes and does not substantially conform with the requirements of chapter 7 of the Compiled Laws of the Territory of Alaska, being subdivision two of section 2147 of the said Compiled Laws in that the statement of facts, in said count five and the other part of the indictment referring to said count, is not stated in such a [26] manner as to enable a person of common understanding to know what is intended thereby or what crime, if any, is attempted or intended to be charged.

VIII.

Without waiving any of the above and foregoing grounds and causes for demurrer to the whole indictment, this defendant, by its attorneys, Winn & Burton, specially demurs to count six of said indictment on the following grounds and for the following reasons:

a. That more than one crime is charged in said indictment against the defendant corporation.

b. That the facts stated in said count do not constitute or charge a crime against the said defendant company in that stating that said defendant did unlawfully and wrongfully maintain and operate for fishing the trap referred to therein without having the tunnel of such trap closed, and without having 25 feet of the webbing or net of the heart of such trap on each side next to the pot thereof lifted or lowered in such a manner as to permit the free passage of salmon and other fishes, does not charge any crime whatsoever.

c. That said charge in said count is duplicitous and ambiguous and attempts to charge three crimes and does not substantially conform with the requirements of chapter 7 of the Compiled Laws of the Territory of Alaska, being subdivision two of section 2147 of said Compiled Laws in that the statement of facts in said count six is not stated in such a manner as to enable a person of common understanding to know what is intended thereby or what crime, if any, is attempted or intended to be charged.

WINN & BURTON,
Attorneys for Defendant.

[Endorsed]: No. 1034-B. In the District Court for the Territory of Alaska, Division No. 1. United State of America, Plaintiff, vs. Thlinket Packing Company, a Corporation, Defendant. Demurrer. Winn & Burton, Attorneys for Defendant. Juneau, Alaska. Filed in the District Court, District of Alaska, First Division, Sep. 15, 1914. J. W. Bell, Clerk. By J. T. Reed, Deputy. [27]

[Order Overruling Demurrer to Indictment, etc., in
Case No. 1034-B.]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1034-B.

UNITED STATES OF AMERICA

vs.

THLINKET PACKING COMPANY, a Corpora-
tion.

ORDER OVERRULING DEMURRER AND
PLEA OF "NOT GUILTY" ENTERED.

This cause comes on again regularly on this day for further hearing on the demurrer to the indictment filed herein; John R. Winn, Esquire, and M. G. Munley, Esquire, of counsel for defendant, appearing in support of said demurrer; United States Attorney John J. Reagan, appearing in opposition thereto.

After hearing argument of Mr. Munley, the Court overrules said demurrer, whereupon the defendant, through its counsel, enters a plea of "not guilty" to the indictment, and asks that the trial of this cause be set beyond October 15, 1914.

Done in open court this 21st day of September, 1914.

ROBERT W. JENNINGS,

Judge. [28]

[Demurrer to Indictment in Case No. 1035-B.]

*District Court for the District of Alaska, Division
No. One, Held at Juneau.*

No. 1035-B.

UNITED STATES OF AMERICA

vs.

THLINKET PACKING COMPANY, a Corpora-
tion.

Comes now the above-named defendant, Thlinket Packing Company, a corporation, by its attorneys, Winn & Burton, and demurs to the indictment on file in the above-entitled cause, and for cause of demurrer states as follows:

I.

That more than one crime is charged in said indictment against the defendant corporation.

II.

That said indictment does not state facts sufficient to constitute any crime as against said defendant corporation.

III.

Without waiving any of the above and foregoing grounds and causes for demurrer to the whole indictment, this defendant, by its attorneys, Winn & Burton, specially demurs to count one of said indictment on the following grounds and for the following reasons:

a. That the facts stated in said count do not constitute a crime against the said defendant company. The mere statement in said count that the said de-

fendant company did unlawfully and wrongfully maintain and operate for fishing a certain trap * * * without having twenty-five feet of the webbing or net of the heart of said trap on each side next to the part thereof lifted or lowered in such manner as to permit the free passage of salmon and other fishes, does not state or [29] charge any offense or crime against the said defendant.

b. That said charge in said count is duplicitous and ambiguous and attempts to charge two crimes, and does not substantially conform with the requirements of chapter 7 of the Compiled Laws of the Territory of Alaska, being subdivision two of section 2147 of the said Compiled Laws of the Territory of Alaska, in that the statement of facts in said count one, and the other part of the indictment referring to count one, is not stated in such a manner as to enable a person of common understanding to know what is intended thereby, or what crime, if any, is attempted or intended to be charged.

IV.

Without waiving any of the above and foregoing grounds and causes for demurrer to the whole indictment, this defendant, by its attorneys, Winn & Burton, specially demurs to count two of said indictment on the following grounds and for the following reasons:

a. That the facts stated in said count do not constitute a crime against the said defendant company. The mere statement in said count that the said defendant company did unlawfully and wrongfully maintain and operate for fishing a certain trap * * * *

without having twenty-five feet of the webbing or net of the heart of said trap on each side next to the pot thereof lifted or lowered in such manner as to permit the free passage of salmon and other fishes, does not state or charge any offense or crime against the said defendant.

b. That said charge in said count is duplicitous and ambiguous and attempts to charge two crimes, and does not substantially conform with the requirements of chapter 7 of the Compiled Laws of the Territory of Alaska, being subdivision two of section 2147 of the said Compiled Laws of the Territory of Alaska in that the statement of facts in said count two, and [30] the other part of the indictment referring to count two, is not stated in such a manner as to enable a person of common understanding to know what is intended thereby, or what crime, if any, is attempted or intended to be charged.

WINN & BURTON,
Attorneys for Defendant.

[Endorsed]: No. 1035-B. In the District Court for the Territory of Alaska, Division No. 1. United States of America, Plaintiff, vs. Thlinket Packing Company, a Corporation, Defendant. Demurrer. Winn & Burton, Attorneys for Defendant, Juneau, Alaska. Filed in the District Court, District of Alaska, First Division. Sep. 15, 1914. J. W. Bell, Clerk. By J. T. Reed, Deputy. [31]

**[Order Overruling Demurrer to Indictment, etc., in
Case No. 1035-B.]**

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1035-B.

UNITED STATES OF AMERICA

vs.

THLINKET PACKING COMPANY, a Corpora-
tion.

**ORDER OVERRULING DEMURRER AND
PLEA OF "NOT GUILTY" ENTERED.**

This cause came on again regularly at this time for further hearing on the demurrer of defendant to the indictment filed herein: John R. Winn, Esquire, and M. G. Munley, Esquire, of counsel for defendant, appearing in support of said demurrer; United States Attorney John J. Reagan, appearing in opposition thereto. And after hearing argument of Mr. Munley, the Court overrules said demurrer.

Whereupon the defendant corporation, through its counsel, enters a plea of "not guilty" to the indictment, and asks that the trial of this cause be set beyond October 15, 1914.

Done in open court this 21st day of September, 1914.

ROBERT W. JENNINGS,
Judge. [32]

*District Court for the District of Alaska, Division
Number One, Held at Juneau.*

No. 1036-B.

UNITED STATES OF AMERICA

vs.

THLINKET PACKING COMPANY, a Corpora-
tion.

Demurrer [in Case No. 1036-B].

Comes now the above-named defendant, Thlinket Packing Company, a corporation, by its attorneys, Winn & Burton, and demurs to the indictment on file in the above-entitled court in the above-entitled cause, and for cause of demurrer states as follows:

I.

That more than one crime is charged in said indictment against the defendant corporation.

II.

That said indictment does not state facts sufficient to constitute any crime as against said defendant corporation.

III.

Without waiving any of the above and foregoing grounds and causes for demurrer to the whole indictment, this defendant, by its attorneys, Winn & Burton specially demurs to count one of said indictment on the following grounds and for the following reasons:

a. That more than one crime is charged in said indictment against the defendant corporation.

b. That the facts stated in said count do not con-

stitute or charge a crime against the said defendant company in that stating that said defendant did unlawfully and wrongfully maintain and operate for fishing the trap referred to therein without having the tunnel of such trap closed, and without having 25 feet of the webbing or net of the heart of such trap on each [33] side next to the pot thereof lifted or lowered in such a manner as to permit the free passage of salmon and other fishes, does not charge any crime whatsoever.

c. That said charge in said count is duplicitous and ambiguous and attempts to charge three crimes and does not substantially conform with the requirements of chapter 7 of the Compiled Laws of the Territory of Alaska, being subdivision two of section 2147 of the said Compiled Laws in that the statement of facts in said count one and the other part of the indictment referring to said count is not stated in such a manner as to enable a person of common understanding to know what is intended thereby or what crime, if any, is attempted or intended to be charged.

IV.

Without waiving any of the above and foregoing grounds and causes for demurrer to the whole indictment, this defendant, by its attorneys, Winn & Burton, specially demurs to count two of said indictment on the following grounds and for the following reasons:

a. That more than one crime is charged in said indictment against the defendant corporation.

b. That the facts stated in said count do not con-

stitute or charge a crime against the said defendant company in that stating that said defendant did unlawfully and wrongfully maintain and operate for fishing the trap referred to therein without having the tunnel or such trap closed, and without having 25 feet of the webbing or net of the heart of such trap on each side next to the pot thereof lifted or lowered in such a manner as to permit the free passage of salmon and other fishes, does not charge any crime whatsoever.

c. That said charge in said count is duplicitous and ambiguous and attempts to charge three crimes and does not substantially conform with the requirements of chapter 7 of the [34] Compiled Laws of the Territory of Alaska, being subdivision two of section 2147 of the said Compiled Laws, in that the statement of facts in said count two and the other part of the indictment referring to said count is not stated in such a manner as to enable a person of common understanding to know what is intended thereby or what crime, if any, is attempted or intended to be charged.

V.

Without waiving any of the above and foregoing grounds and causes for demurrer to the whole indictment, this defendant, by its attorneys, Winn & Burton, specially demurs to count three of said indictment on the following grounds and for the following reasons:

a. That more than one crime is charged in said indictment against the defendant corporation.

b. That the facts stated in said count do not con-

stitute or charge a crime against the said defendant company in that stating that said defendant did unlawfully and wrongfully maintain and operate for fishing the trap referred to therein without having the tunnel of such trap closed, and without having 25 feet of the webbing or net of the heart of such trap on each side next to the pot thereof lifted or lowered in such a manner as to permit the free passage of salmon and other fishes, does not charge any crime whatsoever.

c. That said charge in said count is duplicitous and ambiguous and attempts to charge three crimes and does not substantially conform with the requirements of chapter 7 of the Compiled Laws of the Territory of Alaska, being subdivision two of section 2147 of said Compiled Laws, in that the statement of facts in said count three and the other part of the indictment referring to said count is not stated in such a manner as to enable a person of common understanding to know what is intended [35] thereby or what crime, if any, is attempted or intended to be charged.

VI.

Without waiving any of the above and foregoing grounds and causes for demurrer to the whole indictment, this defendant, by its attorneys, Winn & Burton, specially demurs to count four of said indictment on the following grounds and for the following reasons:

a. That more than one crime is charged in said indictment against the defendant corporation.

b. That the facts stated in said count do not con-

stitute or charge a crime against the said defendant company in that stating that said defendant did unlawfully and wrongfully maintain and operate for fishing the trap referred to therein without having the tunnel of such trap closed, and without having 25 feet of the webbing or net of the heart of such trap on each side next to the pot thereof lifted or lowered in such manner as to permit the free passage of salmon and other fishes, does not charge any crime whatsoever.

c. That said charge in said count is duplicitous and ambiguous and attempts to charge three crimes and does not substantially conform with the requirements of chapter 7 of the Compiled Laws of the Territory of Alaska, being subdivision two of section 2147 of the said Compiled Laws, in that the statement of facts in said count four and the other part of the indictment referring to said count is not stated in such a manner as to enable a person of common understanding to know what is intended thereby or what crime, if any, is attempted or intended to be charged.

VII.

Without waiving any of the above and foregoing grounds for demurrer to the whole indictment, this defendant, by its attorneys, Winn & Burton, specially demurs to [36] count five of said indictment on the following grounds and for the following reasons:

a. That more than one crime is charged in said indictment against the defendant corporation.

b. That the facts stated in said count do not constitute or charge a crime against the said defendant

company in that stating that said defendant did unlawfully and wrongfully maintain and operate for fishing the trap referred to therein without having the tunnel of such trap closed, and without having 25 feet of the webbing or net of the heart of such trap on each side next to the pot thereof lifted or lowered in such a manner as to permit the free passage of salmon and other fishes, does not charge any crime whatsoever.

c. That said charge in said count is duplicitous and ambiguous and attempts to charge three crimes and does not substantially conform with the requirements of chapter 7 of the Compiled Laws of the Territory of Alaska, being subdivision two of section 2147 of the said Compiled Laws, in that the statement of facts in said count five and the other part of the indictment referring to said count is not stated in such a manner as to enable a person of common understanding to know what is intended thereby or what crime, if any, is attempted or intended to be charged.

VIII.

Without waiving any of the above and foregoing grounds and causes for demurrer to the whole indictment, this defendant, by its attorneys, Winn & Burton, specially demurs to count six of said indictment on the following grounds and for the following reasons:

a. That more than one crime is charged in said indictment against the defendant corporation.

b. That the facts stated in said count do not constitute or charge a crime against the said defendant

company in [37] that stating that said defendant did unlawfully and wrongfully maintain and operate for fishing the trap referred to therein without having the tunnel of such trap closed, and without having 25 feet of the webbing or net of the heart of such trap on each side next to the pot thereof lifted or lowered in such manner as to permit the free passage of salmon and other fishes, does not charge any crime whatsoever.

c. That said charge in said count is duplicitous and ambiguous and attempts to charge three crimes and does not substantially conform with the requirements of chapter 7 of the Compiled Laws of the Territory of Alaska, being subdivision two of section 2147 of the said Compiled Laws, in that the statement of facts in said count six and the other part of the indictment referring to said count is not stated in such a manner as to enable a person of common understanding to know what is intended thereby or what crime, if any, is attempted to be charged.

IX.

Without waiving any of the above and foregoing grounds and causes for demurrer to the whole indictment, this defendant, by its attorneys, Winn & Burton, specially demurs to count seven of said indictment on the following grounds and for the following reasons:

a. That more than one crime is charged in said indictment against the defendant corporation.

b. That the facts stated in said count do not constitute or charge a crime against the said defendant company in that stating that said defendant did un-

lawfully and wrongfully maintain and operate for fishing the trap referred to therein without having the tunnel of such trap closed, and without having 25 feet of the webbing or net of the heart of such trap on each side next to the pot thereof lifted or lowered in such a manner as to permit the free passage of salmon and other fishes, does not charge any crime whatsoever. [38]

c. That said charge in said count is duplicitous and ambiguous and attempts to charge three crimes and does not substantially conform with the requirements of chapter 7 of the Compiled Laws of the Territory of Alaska, being subdivision two of section 2147 of the said Compiled Laws, in that the statement of facts in said count seven and the other part of the indictment referring to said count is not stated in such a manner as to enable a person of common understanding to know what is intended thereby of what crime, if any, is attempted to be charged.

WINN & BURTON,
Attorneys for Defendant.

[Endorsed]: No. 1036-B. In the District Court for the Territory of Alaska, Division No. 1, United States of America, Plaintiff, vs. Thlinket Packing Company, a corporation, Defendant. Demurrer. Winn & Burton, Attorneys for Defendant, Juneau, Alaska. Filed in the District Court, District of Alaska, First Division, Sep. 15, 1914. J. W. Bell, Clerk. By J. T. Reed, Deputy. [39]

[Order Overruling Demurrer to Indictment, etc., in
Case No. 1036-B.]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1036-B.

UNITED STATES OF AMERICA

vs.

THLINKET PACKING COMPANY, a Corpora-
tion.

ORDER OVERRULING DEMURRER AND
PLEA OF "NOT GUILTY" ENTERED.

This cause comes on again regularly at this time for further hearing on the demurrer of defendant to the indictment filed herein: John R. Winn, Esquire, and M. G. Munley, Esquire, of counsel for defendant, appearing in support of said demurrer; United States Attorney John J. Reagan, appearing in opposition thereto. And after argument by Mr. Munley, the Court overrules said demurrer.

Whereupon the defendant corporation, through its counsel, enters a plea of "not guilty" to the indictment, and asks that the trial of this cause be set beyond October 15, 1914.

Done in open court this 21st day of September, 1914.

ROBERT W. JENNINGS,
Judge. [40]

United States of America,
District of Alaska.

*In the District Court of the United States for the
District of Alaska, Division Number One.*

#1034-B.

THE UNITED STATES OF AMERICA

vs.

THLINKET PACKING COMPANY, a Corpora-
tion.

Verdict [in Case No. 1034-B].

Special August Term, 1914.

We, the Jury empaneled and sworn in the above-entitled cause, find the defendant guilty as charged in the Indictment, with recommendation for clemency of the Court.

Dated Juneau, Alaska, October 30, 1914.

A. A. GABBS,
Foreman.

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Oct. 30, 1914. J. W. Bell, Clerk. By John T. Reed, Deputy. [41]

United States of America,
District of Alaska.

*In the District Court of the United States for the
District of Alaska, Division Number One.*

#1035-B.

THE UNITED STATES OF AMERICA

vs.

THLINKET PACKING COMPANY, a Corpora-
tion.

Verdict [in Case No. 1035-B].

Special August Term, 1914.

We, the Jury empaneled and sworn in the above-entitled cause, find the defendant guilty as charged in the Indictment, with recommendation for clemency of the Court.

Dated Juneau, Alaska, October 30, 1914.

A. A. GABBS,
Foreman.

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Oct. 30, 1914. J. W. Bell, Clerk. By John T. Reed, Deputy. [42]

United States of America,
District of Alaska.

*In the District Court of the United States for the
District of Alaska, Division Number One.*

#1036-B.

THE UNITED STATES OF AMERICA

vs.

THLINKET PACKING COMPANY, a Corpora-
tion.

Verdict [in Case No. 1036-B].

Special August Term, 1914.

We, the Jury empaneled and sworn in the above-entitled cause, find the defendant guilty as charged in the Indictment, with recommendation for clemency of the Court.

Dated Juneau, Alaska, October 30, 1914.

A. A. GABBS,

Foreman.

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Oct. 30, 1914. J. W. Bell, Clerk. By John T. Reed, Deputy. [43]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

1034-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

1035-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

**Order [Denying Plaintiff's Motion to Set Aside
Verdict, etc.].**

This matter coming on for hearing in open court on motion of the defendant in each of the above-entitled cases, and plaintiff being represented by United States District Attorney for the District of Alaska, Division No. 1, and it appearing to the court that by oversight there has not been entered any order in either of the above-entitled cases overruling and denying plaintiff's motion in each of said cases, filed on the 28th day of January, A. D. 1915, asking to set aside the verdict in each of said cases or to consider said verdict in each of said cases as a verdict of acquittal, [44]

NOW, THEREFORE, IT IS HEREBY ORDERED that said motion be, and the same is, over-

ruled and denied, and this order is to be entered as of the 29th day of March, A. D. 1915.

Done in open court this 8th day of July, A. D. 1915.

ROBERT W. JENNINGS,
Judge.

[Endorsed]: Filed in the District Court, District of Alaska, First Division, Jul. 8, 1915. J. W. Bell, Clerk. By John T. Reed, Deputy. [45]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1034-B.

UNITED STATES OF AMERICA

vs.

THLINKET PACKING COMPANY, a Corpora-
tion.

**Oral Decision Denying Defendant's Motion for a
New Trial.**

The Court renders its oral decision, denying defendant's motion for a new trial.

Done in open court this 29th day of March, 1915.

ROBERT W. JENNINGS,
Judge.

No. 1035-B.

UNITED STATES OF AMERICA

vs.

THLINKET PACKING COMPANY, a Corpora-
tion.

**Oral Decision Denying Defendant's Motion for a
New Trial.**

The Court renders its oral decision, denying defendant's motion for a new trial.

Done in open court this 29th day of March, 1915.

ROBERT W. JENNINGS,
Judge.

No. 1036-B.

UNITED STATES OF AMERICA

vs.

THLINKET PACKING COMPANY, a Corporation.

**Oral Decision Denying Defendant's Motion for a
New Trial.**

The Court renders its oral decision, denying defendant's motion for a new trial.

Done in open court this 29th day of March, 1915.

ROBERT W. JENNINGS,
Judge. [46]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1034-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corporation,

Defendant.

Judgment and Sentence.

Comes now the defendant into court, through its counsel, John R. Winn, Esquire, for sentence upon the verdict of guilty, with recommendation for clemency of the Court, heretofore rendered herein, on October 30, 1914, for violation of section 5, Act of June 26, 1906; United States Attorney John J. Reagan also being present in court.

Whereupon the defendant, through its counsel, is asked if it has any reason to offer why the judgment and sentence of the Court should not now be imposed, and after hearing Judge Winn in respect thereto, and the Court being fully advised in the premises;

It is the judgment of the Court that the defendant herein is guilty of the violation of section 5, Act of June 26, 1906; and it is the sentence of the Court that said defendant, the Thlinket Packing Company, a corporation, pay a fine of One Hundred Dollars (\$100.00).

And on oral request of Judge Winn, and the United State Attorney not objecting thereto, the defendant is granted a stay of execution of forty (40) days from this date, in which to prepare a Bill of Exceptions and take an appeal, and execution upon the judgment is, in the meantime, stayed.

Done in open court this 31st day of March, 1915.

ROBERT W. JENNINGS,
District Judge.

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Mar. 31, 1915. J. W. Bell, Clerk. By C. Z. Denny, Deputy. [47]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1035-B.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

Judgment and Sentence.

Comes now the defendant into court, through its counsel, John R. Winn, Esquire, for sentence upon the verdict of guilty, with recommendation for clemency of the Court, heretofore rendered herein, on October 30, 1914, for violation of section 5, Act of June 26, 1906; United States Attorney John J. Reagan also being present in court.

Whereupon the defendant, through its counsel, is asked if it has any reason to offer why the judgment and sentence of the Court should not now be imposed, and after hearing Judge Winn in respect thereto, and the Court being fully advised in the premises;

It is the judgment of the Court that the defendant herein is guilty of the violation of section 5, Act of June 26, 1906; and it is the sentence of the Court that said defendant, the Thlinket Packing Company, a corporation, pay a fine of One Hundred Dollars (\$100.00).

And on oral request of Judge Winn, and the United States Attorney not objecting thereto, the de-

fendant is granted a stay of execution of forty (40) days from this date, in which to prepare a Bill of Exceptions and take an appeal, and execution upon the judgment is, in the meantime, stayed.

Done in open court this 31st day of March, 1915.

ROBERT W. JENNINGS,

District Judge.

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Mar. 31, 1915. J. W. Bell, Clerk. By C. Z. Denny, Deputy. [48]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1036-B.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

Judgment and Sentence.

Comes now the defendant into court, through its counsel, John R. Winn, Esquire, for sentence upon the verdict of guilty, with recommendation for clemency of the Court, heretofore rendered herein, on October 30, 1914, for violation of section 5, Act of June 26, 1906; United States Attorney John J. Reagan also being present in court.

Whereupon the defendant, through its counsel, is asked if it has any reason to offer why the judgment

and sentence of the Court should not now be imposed, and after hearing Judge Winn in respect thereto, and the Court being fully advised in the premises;

It is the judgment of the Court that the defendant herein is guilty of the violation of section 5, Act of June 26, 1906; and it is the sentence of the Court that said defendant, the Thlinket Packing Company, a corporation, pay a fine of One Hundred Dollars (\$100.00).

And on oral request of Judge Winn, and the United States Attorney not objecting thereto, the defendant is granted a stay of execution of forty (40) days from this date, in which to prepare a Bill of Exceptions and take an appeal, and execution upon the judgment is, in the meantime, stayed.

Done in open court this 31st day of March, 1915.

ROBERT W. JENNINGS,

Judge.

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Mar. 31, 1915. J. W. Bell, Clerk. By C. Z. Denny, Deputy. [49]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1034-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

No. 1035-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

No. 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

**Motion [for Order Making Exceptions, etc., Part of
Record on Appeal to Circuit Court of Appeals].**

Come now Winn & Burton, attorneys for the Thlinket Packing Company, the defendant in the above-entitled cases consolidated, and move the Court to make an order herein,

First. Making the objections, filed herein on the — day of Oct., 1914, made by the said defendant company through its attorneys, M. G. Munly and Winn & Burton, to any testimony or evidence being introduced, offered or received by this Court pertaining to any of the alleged charges in each and every of the indictments and in each and every count set forth in the same, a part of the record herein to be certified as such to the United States Circuit Court of Appeals for the 9th Circuit, under the Writ of

Error and proceedings had herein.

Second. To make a part of the record herein to be certified to the United States Circuit Court of Appeals for the Ninth Circuit under the Writ of Error herein, the instructions tendered and offered to the Court by the defendant, and requested to be [50] given as the instructions in said case, which said instructions were filed in this case on October 29, 1914, and numbered one to five, inclusive.

Third. To make a part of the record herein under the Writ of Error and to be certified to the United States Circuit Court of Appeals for the Ninth Circuit, the motion filed herein on January 28, 1915, to set aside the verdict of the jury on the several indictments herein and to treat the verdict as a verdict of acquittal, and that the defendant be discharged.

Fourth. That the Court make a part of the record herein the Motion for New Trial filed in said consolidated cases on October 31, 1914, together with the affidavits of J. R. Homer, Wallis George, Z. M. Bradford, D. W. Fales and Charles H. Hall and A. A. Gabbs, attached to said motion and substantiating one of the grounds for new trial.

WINN & BURTON,

Attorneys for Defendant.

Copy of the foregoing motion received this 11th day of June, 1915, and service admitted.

JAMES A. SMISER,

U. S. Atty.,

By JNO. J. REAGAN,

Asst. U. S. Atty.,

Attys. for Plff.

[Endorsed]: No. 1034-B. In the District Court for the Territory of Alaska, Division No. 1. United States of America, Plaintiff, vs. Thlinket Packing Company, a Corporation, Defendant. Motion. Winn & Burton, Attorneys for Defendant. Juneau, Alaska. Filed in the District Court. District of Alaska. First Division, Jun. 11, 1915. J. W. Bell, Clerk. By C. Z. Denny, Deputy. [51]

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 1034-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

Assignment of Errors.

Comes now the above-named defendant in the above-entitled case No. 1034-B, which said case was consolidated for trial with cases Nos. 1035-B and 1036-B, and assigns the following errors committed by the Court on the trial and determination of the said case No. 1034-B, and upon which said errors said defendant will rely upon its prosecution of the Writ of Error in said case and the errors that it will rely on in the Appellate Court:

First. That the Court erred in overruling defendant's demurrer in said case No. 1034-B, which order was made and entered in said case on the 21st

day of September, 1914, before the consolidation of said case for trial with the other two cases mentioned herein. Such ruling was excepted to by the defendant and exception allowed.

Second. The Court erred in not granting the defendant a separate trial in each of said cases mentioned herein, [52] and in making an order, over defendant's objections, consolidating and trying said three cases at one time, which said ruling of the Court was at the time excepted to and exception allowed.

Third. The Court erred in overruling the defendant's objections to the introduction of any testimony or evidence or receiving any evidence by the Court pertaining to any of the alleged charges made in said indictment, or any evidence or testimony which the plaintiff offered to establish defendant's guilt of any of the counts set forth in said indictment, which said objections were presented to and filed with the Court after the empaneling of the jury in said consolidated case and after the first witness on the part of the plaintiff was sworn to testify, which said objections are as follows:

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

Nos. 1034-B, 1035-B, 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

Objections.

Come now M. G. Munly and Winn & Burton, attorneys for the Thlinket Packing Company, a corporation, in the three indictments in this court against the said Thlinket Packing Company, to wit: Indictment Nos. 1034-B, 1035-B, 1036-B, and after the empaneling of the jury and the first witness on the part of the plaintiff, the United States, being sworn to testify concerning the alleged crime set forth in each and all of the counts set out in the foregoing indictments, and object to any testimony or evidence being introduced, offered or received by this Court pertaining to any of the alleged charges in each and every indictment, and in each and every count set forth in the same upon the following grounds and for the following reasons,

1. That each several indictment and every count thereof does not charge the offense defined and set out in the statute. That each several indictment, and every count thereof fails to charge that defendant did unlawfully fish for, take [53] or kill salmon of any species.

3. That each several indictment and every count thereof does not set forth the facts constituting the alleged offense in such manner as to apprise the defendant of the nature of the charge which he is called upon to defend.

4. That each several indictment and every count thereof fails to allege that said alleged fishing was done during the weekly close season.

5. That each several indictment and every count

thereof does not allege or set out any particulars or facts as to the closing of the tunnels, or the facts with regard to the raising or lowering of the webbing of the heart next to the pot in such manner as to permit the free passage of salmon and other fishes, in such a way as to embrace every element of the offense defined by the statute.

6. That each several indictment and every count thereof fails to allege that the locality where such fishing was done was not in the districts or places excepted from the statute, viz.: that it was not in Cook's Inlet, the Delta of Copper River, Bering Sea, or waters tributary thereto; or that it was not with one of the excepted forms of gear, viz.: rod, spear or gaff.

7. That each several indictment and every count thereof fails to charge the offense denounced by the statute in such manner as to enable a person of common understanding to know what is intended, and the offense is not alleged with such a degree of certainty as to enable the Court to pronounce judgment in case of conviction according to the right of the case.

M. G. MUNLY and

WINN & BURTON,

Attorneys for Defendant.

Three and one-half. While the witness Earnest P. Walker was on the witness-stand in behalf of the plaintiff, the following questions were propounded him by the Government's attorney, which were objected to by the defendant.

Q. Mr. Walker, will you state where the traps are

situated that you have testified to here?

Mr. WINN.—We object to the question for the reason that it is incompetent, irrelevant and immaterial under the charges made in the indictments. That insomuch as they haven't set forth in these indictments that the traps are not in open waters or open fields where they can be fished at any and all times and all seasons, the question cannot be answered and no proof can be made thereof for the reason that it hasn't been properly pleaded in the indictments.

The COURT.—The objection will be overruled.

Q. (By Mr. REAGAN.) In what waters?

Mr. WINN.—We object.

The COURT.—Same ruling.

A. The waters of Icy Straits and Chatam Straits in that district.

To the introduction of such testimony an exception was allowed and the Court erred in admitting said evidence over defendant's objection.

Fourth. The Court erred in overruling and denying defendant's motion, filed at the close of plaintiff's case and when it rested its case, which said motion requested the Court to grant an instructed verdict in favor of the defendant, the Thlinket Packing Company, or to dismiss said case and grant a nonsuit therein for the lack or want of evidence to establish defendant's guilt of any of the charges set forth in the different counts or any one of the counts set forth in said indictment, which said motion was duly made, filed and presented to the Court, overruled and denied and an exception allowed to the defend-

ant. [54] The said motion so made and filed with the Court, as aforesaid, is as follows:

Come now M. G. Munly and Winn & Burton, attorneys for the Thlinket Packing Company, a corporation, in the three indictments in this court against the said Thlinket Packing Company, to wit: Indictments Nos. 1034-B, 1035-B and 1036-B, and attorneys for said company in all the counts in each and all of those indictments, and move the Court to direct the jury to bring in a verdict in favor of the Thlinket Packing Company, or to dismiss the proceedings for want of evidence to establish each and all of the counts, or any of the counts, set out in the three indictments above mentioned, upon the following grounds and for the following reasons: First, that each several indictment and every count therein does not charge the offense defined and set out in the statute; that each several indictment and every count thereof fails to charge that the defendant did unlawfully fish for, take, or kill salmon of any species.

Second. That there is no evidence to establish such fact in the case; that each and all of the several indictments, and each count thereof, did not allege that the defendant failed to close the gate, mouth or tunnel, or raise or lower the heart next to the pot in a trap that is designed and used by the defendant to fish for, take or kill salmon of any species, and that there is no evidence in the case to establish such fact.

Third. That each of the several indictments and every count therein does not set forth the facts con-

stituting the alleged offense in such manner as to apprise the defendant of the nature of the charge of which he is called upon to defend.

Fourth. That each several indictment, and every count thereof, fails to allege that the said alleged fishing was done during the closed season.

Fifth. That each several indictment and every count thereof does not allege or set out any particulars or facts as to the closing of the tunnels or the facts with regard to the raising or lowering of the webbing of the heart next to the pot in such manner as to prevent the free passage of salmon in such a way as to embrace every element of the offense defined by the statute.

Sixth. That each several indictment and every count thereof fails to allege that the locality where such fishing was done was not in the district or place excepted from the statute, that is, it was not in Cook's Inlet, the Delta of the Copper River, Bering Sea, or waters tributary thereto, or that it was not with one of the excepted forms of gear, viz.: rod, spear, or gaff, and that there is no evidence now before the jury to show as to whether or not, if any crime was committed, that it was committed within the prohibited districts of the waters of Alaska, as defined by the section under which the indictments are made.

Seventh. That each several indictment and every count thereof fails to charge the offense denounced by the statute in such manner as to enable a person of common understanding to know what is intended, and the offense is not alleged with such a degree of

certainty as to enable the Court to pronounce judgment in case of conviction according to the right of the case.

Eighth. That there is no evidence in the case on the part of the Government to disprove the fact or to show as to whether or not the way the respective traps were opened that there could or could not be a free passage of salmon and other fishes, counsel for the defendant company claiming that the reasonable construction of the statute is that if the trap was open in such a way so that it did not prevent the free passage of salmon and [55] other fishes, then the spirit of the statute is complied with; that the only thing the statute is intended to prohibit is the free running of salmon and other fishes, and that is an element which it is incumbent upon the Government to establish before it can establish any charge against the defendant company.

Fifth. The Court erred in failing and refusing to instruct the jury as requested by the defendant and to give to the said jury the instructions or any of them tendered and requested in said case by said defendant and its attorneys at the close of all the testimony and evidence on the part of plaintiff and defendant, which said refusal of the Court to so instruct the jury was duly excepted to by plaintiff and exception allowed. The said instructions so offered and requested by defendant and on file herein are as follows, to wit:

Nos. 1034-B, 1035-B, 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corporation,
tion,

Defendant.

Instructions.

INSTRUCTION NO. 1.

Gentlemen of the Jury, this is a criminal case consisting of three indictments against the defendant, and each indictment containing two or more counts or charges, each counter-charge claiming on the specific date mentioned therein that the defendant violated the fishing laws of Alaska by reason of maintaining and operating certain fish traps and failing to, in some instances or some of the counts, to raise or lower the web of that part of the trap known as the heart, as required by law, and in other counts charging this last matter and also the failure to close what is known as the tunnel leading from the heart of the trap to the pot, as required by law. It is necessary for the Government to prove these facts last mentioned beyond a reasonable doubt before you would be justified in finding the defendant guilty of any one or more of the counts contained in the three indictments referred to herein. And should the Government fail to prove to your mind beyond a reasonable doubt that the facts mentioned

herein are true, then it is your duty to acquit the defendant.

INSTRUCTION NO. 2.

I also instruct you, Gentlemen of the Jury, that the purpose and spirit of the law is to protect salmon so that they may not be obstructed in their passage to their spawning ground during the weekly close season. Unless the Government in this case prove to your mind beyond a reasonable doubt that the web of [56] the heart of any trap described in any of these various indictments or various counts was not raised, opened or lowered in such a manner as to permit the free passage of salmon or other fishes to escape and go to their spawning ground, then, it is your duty to return a verdict of "Not Guilty" herein.

INSTRUCTION NO. 3.

The statute provides that 25 feet of the webbing each side of the heart next to the pot shall be lifted or lowered in such manner as to permit the free passage of salmon or other fishes during the weekly close season. As a matter of fact, if you find in any of the cases or charges against the defendant that 25 feet of the webbing of the heart was so lifted or lowered to permit the free passage of salmon or other fishes, your verdict must be for the defendant, and in this connection the statute does not mean that 25 feet of the heart of a trap must be raised or lowered vertically; if 25 feet of the webbing is lifted or lowered in a "V" shape but yet in such manner as to permit the free passage of salmon and other fishes such opening is a sufficient compliance with the stat-

ute and your verdict must be for the defendant.

INSTRUCTION NO. 4.

The language of the statute is that 25 feet of the webbing on each side of the heart next to the pot shall be lifted or lowered in such manner as to permit the free passage of salmon and other fishes. That does not mean 25 feet square or that 25 feet must be torn out of the sides of the heart every weekly close season. Any manner of lowering or lifting 25 feet of the heart so as to permit the free passage of salmon and other fishes so that they may go on through the trap to their spawning ground is sufficient. And if you find as to any of the charges in these indictments that the heart of any trap was so lifted or lowered or opened your verdict must be for the defendant.

INSTRUCTION NO. 5.

I also instruct you that the right of fishing, or of fishery as it is called, is common and free to every citizen. The Government has, however, the power to regulate and restrict it. This right to free fishing can only be limited or taken away just as far as any such regulations go; and, therefore, the regulations regarding salmon traps during the weekly close season established by the Government cannot be extended or expanded beyond their strict meaning. The statute says that:

“Throughout the weekly close season herein prescribed, the gate, mouth or tunnel of all stationary and floating traps shall be closed, and twenty-five feet of the webbing or net of the ‘heart’ of such traps on each side of the ‘pot’

shall be lifted or lowered in such manner as to permit the free passage of salmon and other fishes.”

Unless the language of the statute itself provided that twenty-five feet of the heart on each side next to the pot should be lifted or lowered from the top to the bottom of the heart, it would be adding to the statute to say so.

You must consider the law as it is. You must determine from the evidence whether 25 feet of the web of the heart on each side of the pot was lifted or lowered in such manner as to permit the free passage of salmon and other fishes. If you find that it was so lowered or lifted in any of the charges against this defendant alleged in the various indictments, you must acquit the defendant. [57]

Sixth. The Court erred in giving to the jury the following instructions:

“Now, that is a positive demand, gentlemen, that twenty-five feet of that net of the heart next to the pot shall be either lifted or lowered, twenty-five feet of it, and it is not only a command that twenty-five feet of it be lifted or lowered, but it is also a command that that twenty-five feet be lifted or lowered in a certain particular manner and to accomplish a certain particular end. Now, take that window-pane just over you—you see a string hanging down that seems to divide that window-pane in two parts. Suppose that window-pane were actually in two separate parts, so each part could be lowered or raised and each part was

twenty-five inches wide, and I asked you to please lower or raise twenty-five inches of that window next to this wall. (Indicating.) I cannot see how it means anything but that I am asking you to either raise or lower that part of the window. I am not asking you to shove the window back—I am not asking you to move the window this way or that way,—I am asking you to raise or lower it. Now, twenty-five feet of the webbing of the heart next to the pot can be raised or lowered, but it need not be horizontal all the way from one end to the other, but there must be twenty-five feet of it in the clear, raised or lowered in such a way as to permit the free passage of fish—salmon and other fishes—for the whole distance of twenty-five feet.”

To all of which said instruction defendant duly excepted at the time that same was given and an exception was allowed.

Seventh. The Court erred in receiving and filing the verdict of the jury in this case over defendant's objection made thereto, which said objection to the reception and filing of said verdict was made and based upon the statements made by Mr. Gabbs, the foreman of the jury, at the time the jury came into court to deliver its verdict, which said statements are more particularly set out in the record herein, and by the affidavit of Mr. Gabbs, foreman of the petit jury and other jurors. Said affidavits are set forth in assignment of error Number IX.

Eighth. The Court erred in overruling defend-

ant's motion filed herein on the 18th day of January, 1915, which is as follows:

Nos. 1034-B, 1035-B, 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

Motion.

Comes now the defendant in the above-entitled cause by its attorneys, M. G. Munly and Winn & Burton, and moves the Court [58] that the verdict of the jury to the indictments in the above-entitled cause be set aside or considered and treated as a verdict of acquittal, and that the defendant be discharged upon the following grounds and for the following reasons, to wit: *viz.*:

I.

Because the true verdict of the jury, as expressed by the jurors through their foreman in open court at the close of the trial of the above-entitled cause and after they had retired to the jury-room and deliberated upon their verdict and at the time of bringing in their verdict into court, was to the effect that defendant had not violated the spirit of the law under which the aforesaid indictments were returned against the above-named defendant.

II.

Because the verdict of the jury to the effect that the defendant had not violated the spirit of the law

is the equivalent of a general verdict of "not guilty."

III.

Because such a verdict does not affirmatively find the defendant guilty of all the elements of the crime charged in the indictments.

IV.

Because sentence cannot be passed upon a defendant based upon a verdict other than that of guilty, and the true verdict of the jury in this case was to the effect that the defendant was not guilty of a violation of the spirit of the law.

V.

Because any judgment which might be rendered in the above-entitled cause based upon a verdict of guilty would be founded upon a verdict which does not specifically find the defendant guilty of all the elements constituting the offense or offenses charged in the indictment and such judgment would be null and void.

VI.

Because said verdict is not responsive to the issues.

M. G. MUNLY,
WINN & BURTON,
Attorneys for Defendant.

Ninth. The Court erred in overruling and denying defendant's motion for a new trial herein, which said motion with the affidavits in support thereof are as follows: [59]

Nos. 1034-B, 1035-B, 1036-B—Consolidated.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

Motion for New Trial.

Comes now the above-named defendant, by its attorneys, M. G. Munly and Winn & Burton, in each of the above-entitled numbered causes consolidated, and feeling itself aggrieved herein, moves the Court to set aside each and all of the verdicts rendered in said causes No. 1034-B, 1035-B and 1036-B against the said defendant in each of said causes and filed in this court on the 30th day of October, A. D. 1914, for the following reasons and following causes materially affecting the substantial right of said defendant.

First. Irregularity in the proceedings of the Court and jury and order and orders of the Court made at the time and upon the reception of the verdict herein, and abuse of discretion of the Court by said actions, rulings and orders of said Court by which the said defendant was prevented from having a fair trial herein; which said irregularities in the proceedings of the Court and jury, and rulings and orders of the Court so made, showing such abuse of discretion will more particularly appear by the affidavits of A. A. Gabbs, Z. M. Bradford, Joe Pippin, J. L. Gage, Charles H. Hall and Wallis George,

jurors, hereto attached, and the stenographic report of the rulings, orders and actions of the Court at the time and upon receiving and filing the verdicts herein.

Second. Insufficiency of the evidence to justify the aforesaid verdicts and each and all of them rendered in the above-entitled causes consolidated, and said verdicts and each and all of them are against law.

Third. Error in law occurring at the trial and excepted to by the defendants.

M. G. MUNLY,
WINN & BURTON,
Attorneys for Defendant.

Nos. 1034-B, 1035-B, 1036-B.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,
Defendant.

Affidavit.

United States of America,
Territory of Alaska,—ss.

J. R. Homer, Wallis George, Z. M. Bradford, D. W. Fales and Charles H. Hall, each for himself being first duly sworn on oath, deposes and says: that I was one of the members of the trial jury in the above case. Upon entering the courtroom to report on our verdict, after the jury had responded to [60]

the roll-call, the question was asked by the Judge as to whether the jury had agreed on the verdict, and the foreman, A. A. Gabbs, declared that we had, and asked the judge in open court as to whether it were possible for us to make any recommendations qualifying or amending the verdict. The Judge asked as to what recommendation or qualifications we wanted, and the foreman thereupon made the statement that, while we believed the defendant had not complied with the letter of the law, still we felt that it had complied with the spirit of the law and wanted to recommend leniency. At that time Judge Winn arose and asked for a court stenographer as he wanted a record of that statement, and Judge Jennings refused to call a stenographer and said to Judge Winn, "I will not order the court stenographer to take such statement," or words to that effect, and then, speaking towards the jury, Judge Jennings said, "What you mean is a recommendation to the Court for mercy, and, if so, you may write it in your verdict," or words to that effect. Thereupon, in the open court, the foreman wrote in each verdict a recommendation for clemency of the Court, and handed the verdict to the clerk. Afterwards Judge Winn arose and asked to have the jury polled, and again called for a court stenographer, and at that time the court stenographer appeared. After the jury was polled, Judge Jennings, turning to said foreman of the jury, said "Now you may make the statement you did on bringing in your verdict," or words to that effect, and the foreman repeated substantially his original

statement to the Court.

J. R. HOMER.

WALLIS GEORGE.

Z. M. BRADFORD.

D. W. FALES.

CHARLES H. HALL.

Subscribed and sworn to before me this 31st day
of October, A. D. 1914.

NEWARK L. BURTON,

Notary Public for Alaska.

My commission expires November 8, 1917.

Nos. 1034-B, 1035-B, 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

Affidavit.

United States of America,
Territory of Alaska,—ss.

A. A. Gabbs, being first duly sworn, on oath deposes and says: That I acted as foreman of the trial jury in the above cases. Upon entering the courtroom to report on our verdict after the jury had responded to the roll-call, the question was asked by the Judge as to whether the jury had agreed on the verdict and I as foreman declared that we had and asked the judge in the open court as to whether it

were possible for us to make any [61] recommendations qualifying or amending the verdict. The Judge asked as to what recommendations or qualifications we wanted, and I thereupon made the statement that while we believed the defendant had not complied with the letter of the law, still we felt that it had complied with the spirit of the law and wanted to recommend leniency. At that time Judge Winn arose and asked for a court stenographer, as he wanted a record of that statement, and Judge Jennings refused to call a stenographer and said to Judge Winn, "I will not order the court stenographer to take such statement" or words to that effect, and then, speaking toward the jury Judge Jennings said, "What you mean is a recommendation to the Court for mercy, and, if so, you may write it in your verdict," or words to that effect. Thereupon in the open court I wrote in each verdict a recommendation for clemency of the Court and handed the verdict to the clerk. Afterwards Judge Winn arose and asked to have the jury polled, and again called for a court stenographer and at that time the court stenographer appeared. After the jury was polled, Judge Jennings, turning to me as foreman of the jury, said, "Now, you may make the statement you did on bringing in your verdict," or words to that effect, and I thereupon repeated substantially my original statement to the Court.

A. A. GABBS.

Subscribed and sworn to before me this 31st day of October, A. D. 1914.

NEWARK L. BURTON,
Notary Public for Alaska.

My commission expires November 8, 1917.

Tenth: The Court erred in sentencing the said defendant to pay a fine herein in the sum of \$100, and entering and filing the judgment herein against said defendant for said amount, which said judgment was entered and filed in this case on the 31 day of March, 1915.

M. G. MUNLY and
WINN & BURTON,
Attorneys for Defendant.

Copy of the foregoing Assignment of Error received this —— day of June, A. D. 1915, and service admitted.

JAMES A. SMISER,
United States District Attorney for the District of
Alaska, Division Number One,

Atty. for Plff.

By JNO. J. REAGAN,
Asst. U. S. Atty.

[Endorsed]: No. 1034-B. In the District Court for the Territory of Alaska, Division No. 1, United States of America, Plaintiff, vs. Thlinket Packing Company, a Corporation, Defendant. Assignment of Error. Winn & Burton, Attorneys for Defendant. Juneau, Alaska. Filed in the District Court, District of Alaska, First Division. Jun. 11, 1915. J. W. Bell, Clerk. By C. Z. Denny, Deputy. [62]

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 1035-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

Assignment of Errors.

Comes now the above-named defendant in the above-entitled case No. 1035-B, which said case is consolidated for trial with cases Nos. 1034-B and 1036-B, and assigns the following errors committed by the Court on the trial and determination of the said case No. 1035-B, and upon which said errors said defendant will rely upon its prosecution of the Writ of Error in said case and the errors that it will rely on in the Appellate Court:

First. That the Court erred in overruling defendant's demurrer in said case No. 1035-B, which said order was made and entered in said case on the 21st day of September, 1914, before the consolidation of said case for trial with the other two cases mentioned herein. Such ruling was excepted to by the defendant and exception allowed.

Second. The Court erred in not granting the defendant a separate trial in each of said cases mentioned herein, [63] and in making an order, over defendant's objections, consolidating and trying said

three cases at one time, which said ruling of the Court was at the time excepted to and exception allowed.

Third. The Court erred in overruling the defendant's objections to the introduction of any testimony or evidence or receiving any evidence by the Court pertaining to any of the alleged charges made in said indictment, or any evidence or testimony which the plaintiff offered to establish defendant's guilt of any of the counts set forth in said indictment, which said objections were presented to and filed with the court after the empaneling of the jury in said consolidated case and after the first witness on the part of the plaintiff was sworn to testify, which said objections are as follows:

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

Nos. 1034-B, 1035-B, 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corporation,

Defendant.

Objections.

Come now M. G. Munly and Winn & Burton, attorneys for the Thlinket Packing Company, a corporation, in the three indictments in this court against the said Thlinket Packing Company, to wit: Indictment Nos. 1034-B, 1035-B, 1036-B, and after

the empaneling of the jury and the first witness on the part of the plaintiff, the United States, being sworn to testify concerning the alleged crime set forth in each and all of the counts set out in the foregoing indictments, and object to any testimony or evidence being introduced, offered or received by this Court pertaining to any of the alleged charges in each and every indictment, and in each and every count set forth in the same upon the following grounds and for the following reasons:

1. That each several indictment and every count thereof does not charge the offense defined and set out in the statute. That each several indictment, and every count thereof fails to charge that defendant did unlawfully fish for, take [64] or kill salmon of any species.

3. That each several indictment and every count thereof does not set forth the facts constituting the alleged offense in such manner as to apprise the defendant of the nature of the charge which he is called upon to defend.

4. That each several indictment and every count thereof fails to allege that said alleged fishing was done during the weekly close season.

5. That each several indictment, and every count thereof does not allege or set out any particulars or facts as to the closing of the tunnels, or the facts with regard to the raising or lowering of the webbing of the heart next to the pot in such manner as to permit the free passage of salmon and other fishes, in such a way as to embrace every element of the offense defined by the statute.

6. That each several indictment, and every count thereof fails to allege that the locality where such fishing was done was not in the districts or places excepted from the statute, viz.: that it was not in Cook's Inlet, the Delta of Copper River, Bering Sea, or waters tributary thereto; or that it was not with one of the excepted forms of gear, viz.: rod, spear or gaff.

7. That each several indictment, and every count thereof fails to charge the offense denounced by the statute in such manner as to enable a person of common understanding to know what is intended, and the offense is not alleged with such a degree of certainty as to enable the Court to pronounce judgment in case of conviction according to the right of the case.

M. G. MUNLY and
WINN & BURTON,
Attorneys for Defendant.

Three and One Half. While the witness Earnest P. Walker was on the witness-stand in behalf of the plaintiff the following questions were propounded him by the government's attorney, which were objected to by the defendant.

Q. Mr. Walker will you state where the traps are situated that you have testified to here?

Mr. WINN.—We object to the question for the reason that it is incompetent, irrelevant and immaterial under the charges made in the indictments. That inasmuch as they haven't set forth in these indictments that the traps are not in open waters or open fields where they can be fished at any and all

times and all seasons, the question cannot be answered and no proof can be made thereof for the reason that it hasn't been properly pleaded in the indictments.

The COURT.—The objection will be overruled.

Q. (By Mr. REAGAN.) In what waters?

Mr. WINN.—We object.

The COURT.—Same ruling.

A. The waters of Icy Straits and Chatam Straits in that district.

To the introduction of such testimony an exception was allowed and the Court erred in admitting said evidence over defendant's objection.

Fourth. The Court erred in overruling and denying defendant's motion, filed at the close of plaintiff's case and when it rested its case, which said motion requested the court to grant an instructed verdict in favor of the defendant, the Thlinket Packing Company, or to dismiss said case and grant a nonsuit therein for the lack or want of evidence to establish defendant's guilt of any of the charges set forth in the different counts or any one of the counts set forth in said indictment, which said motion was duly made, filed and presented to the Court, overruled and denied and an exception allowed to the defendant.

[65]

The said motion so made and filed with the Court, as aforesaid, is as follows:

Come now M. C. Munly and Winn & Burton, attorneys for the Thlinket Packing Company, a corporation, in the three indictments in this court against the said Thlinket Packing Company, to wit:

Indictments Nos. 1034-B, 1035-B, and 1036-B, and attorneys for said company in all the counts in each and all of those indictments, and move the Court to direct the jury to bring in a verdict in favor of the Thlinket Packing Company, or to dismiss the proceedings for want of evidence to establish each and all of the counts, or any of the counts, set out in the three indictments above mentioned, upon the following grounds and for the following reasons:

First, That each several indictment and every count therein does not charge the offense defined and set out in the statute; that each several indictment and every count thereof fails to charge that the defendant did unlawfully fish for, take, or kill salmon of any species.

Second. That there is no evidence to establish such fact in the case; that each and all of the several indictments, and each count thereof, did not allege that the defendant failed to close the gate, mouth or tunnel, or raise or lower the heart next to the pot in a trap that is designed and used by the defendant to fish for, take or kill salmon of any species, and that there is no evidence in the case to establish such fact.

Third. That each of the several indictments and every count therein does not set forth the facts constituting the alleged offense in such manner as to apprise the defendant of the nature of the charge of which he is called upon to defend.

Fourth. That each several indictment, and every count thereof, fails to allege that the said alleged fishing was done during the closed season.

Fifth. That each several indictment and every count thereof does not allege or set out any particulars or facts as to the closing of the tunnels or the facts with regard to the raising or lowering of the webbing of the heart next to the pot in such manner as to prevent the free passage of salmon in such a way as to embrace every element of the offense defined by the statute.

Sixth. That each several indictment and every count thereof fails to allege that the locality where such fishing was done was not in the district or place excepted from the statute; that is, it was not in Cook's Inlet, the Delta of the Copper River, Bering Sea, or waters tributary thereto, or that it was not with one of the excepted forms of gear, viz.: rod, spear, or gaff, and that there is no evidence now before the jury to show as to whether or not, if any crime was committed, that it was committed within the prohibited districts of the waters of Alaska as defined by the section upon which the indictments are made.

Seventh. That each several indictment and every count thereof fails to charge the offense denounced by the statute in such a manner as to enable a person of common understanding to know what is intended, and the offense is not alleged with such a degree of certainty as to enable the Court to pronounce judgment in case of conviction according to the right of the case.

Eighth. That there is no evidence in the case on the part of the Government to disprove the fact or to show as to whether or not the way the respective

traps were opened that there could or could not be a free passage of salmon and other fishes, counsel for the defendant company claiming that the reasonable construction of the statute is that if the trap was open in such a way so that it did not prevent the free passage of salmon and [66] other fishes, then the spirit of the statute is complied with; that the only thing the statute is intended to prohibit is the free running of salmon and other fishes, and that is an element which it is incumbent upon the Government to establish before it can establish any charge against the defendant company.

FIFTH. The Court erred in failing and refusing to instruct the jury as requested by the defendant and to give to the said jury the instructions or any of them tendered and requested in said case by said defendant and its attorneys at the close of all the testimony and evidence on the part of plaintiff and defendant, which said refusal of the Court to so instruct the jury was duly excepted to by plaintiff and exception allowed. The said instructions so offered and requested by defendant and on file herein are as follows, to wit:

Nos. 1034-B, 1035-B, 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corporation,

Defendant.

Instructions.**INSTRUCTION No. 1.**

Gentlemen of the Jury, this is a criminal case consisting of three indictments against the defendant, and each indictment containing two or more counts or charges, each counter-charge claiming on the specific date mentioned therein that the defendant violated the fishing laws of Alaska by reason of maintaining and operating certain fish-traps and failing to, in some instances or some of the counts, to raise or lower the web of that part of the trap known as the heart, as required by law, and in other counts charging this last matter and also the failure to close what is known as the tunnel leading from the heart of the trap to the pot, as required by law. It is necessary for the Government to prove these facts last mentioned beyond a reasonable doubt before you would be justified in finding the defendant guilty of any one or more of the count's contained in the three indictments referred to herein. And should the Government fail to prove to your mind beyond a reasonable doubt that the facts mentioned herein are true, then, it is your duty to acquit the defendant.

INSTRUCTION No. 2.

I also instruct you, Gentlemen of the Jury, that the purpose and spirit of the law is to protect salmon so that they may not be obstructed in their passage to their spawning ground during the weekly close season. Unless the Government in this case prove to your mind beyond a reasonable doubt that the web

of [67] the heart of any trap described in any of these various indictments or various counts was not raised, opened or lowered in such a manner as to permit the free passage of salmon or other fishes to escape and go to their spawning ground, then, it is your duty to return a verdict of "Not Guilty" herein.

INSTRUCTION No. 3.

The statute provides that 25 feet of the webbing each side of the heart next to the pot shall be lifted or lowered in such manner as to permit the free passage of salmon or other fishes during the weekly close season. As a matter of fact if you find in any of the cases or charges against the defendant, that 25 feet of the webbing of the heart was so lifted or lowered to permit the free passage of salmon or other fishes, your verdict must be for the defendant, and, in this connection the statute does not mean that 25 feet of the heart of a trap must be raised or lowered vertically; if 25 feet of the webbing is lifted or lowered in a "V" shape but yet in such manner as to permit the free passage of salmon and other fishes such opening is a sufficient compliance with the statute and your verdict must be for the defendant.

INSTRUCTION No. 4.

The language of the statute is, that 25 feet of the webbing on each side of the heart next to the pot shall be lifted or lowered in such manner as to permit the free passage of salmon and other fishes. That does not mean 25 feet square or that 25 feet must be torn out of the sides of the heart every

weekly close season. Any manner of lowering or lifting 25 feet of the heart so as to permit the free passage of salmon and other fishes so that they may go on through the trap to their spawning ground is sufficient. And if you find as to any of the charges in these indictments that the heart of any trap was so lifted or lowered or opened, your verdict must be for the defendant.

INSTRUCTION No. 5.

I also instruct you that the right of fishing, or of fishery as it is called, is common and free to every citizen. The Government has, however, the power to regulate and restrict it. This right to free fishing can only be limited or taken away just as far as any such regulations go; and, therefore, the regulations regarding salmon traps during the weekly close season established by the Government cannot be extended or expanded beyond their strict meaning. The statute says that:

“Throughout the weekly close season herein prescribed, the gate, mouth or tunnel of all stationary and floating traps shall be closed, and twenty-five feet of the webbing or net of the “heart” of such traps on each side of the “pot” shall be lifted or lowered in such manner as to permit the free passage of salmon and other fishes.”

Unless the language of the statute itself provided that twenty-five feet of the heart on each side next to the pot should be lifted or lowered from the top to the bottom of the heart, it would be adding to the statute to say so.

You must consider the law as it is. You must determine from the evidence whether 25 feet of the web of the heart on each side of the pot was lifted or lowered in such manner as to permit the free passage of salmon and other fishes. If you find that it was so lowered or lifted in any of the charges against this defendant alleged in the various indictments, you must acquit the defendant. [68]

Sixth. The Court erred in giving to the jury the following instruction:

“Now, that is a positive demand, gentlemen, that twenty-five feet of that net of the heart next to the pot shall be either lifted or lowered, twenty-five feet of it, and it is not only a command that twenty-five feet of it be lifted or lowered, but it is also a command that that twenty-five feet shall be lifted or lowered in a certain particular manner and to accomplish a certain particular end. Now, take that window-pane just over you—you see a string hanging down that seems to divide that window-pane in two parts. Suppose that window-pane were actually in two separate parts, so each could be lowered or raised and each part was twenty-five inches wide, and I asked you to please lower or raise twenty-five inches of that window next to this wall. (Indicating.) I cannot see how it means anything but that I am asking you to either raise or lower that part of the window. I am not asking you to shove the window back—I am not asking you to move the window this way or that way,—I am asking you to raise or lower it.

Now, twenty-five feet of the webbing of the heart next to the pot can be raised or lowered, but it need not be horizontal all the way from one end to the other, but there must be twenty-five feet of it in the clear, raised or lowered in such a way as to permit the free passage of fish—salmon and other fishes—for the whole distance of twenty-five feet.”

To all of which said instruction defendant duly excepted at the time that same was given and an exception was allowed.

Seventh. The Court erred in receiving and filing the verdict of the jury in this case over defendant's objection made thereto, which said objection to the reception and filing of said verdict was made and based upon the statements made by Mr. Gabbs, the foreman of the jury, at the time the jury came into court to deliver its verdict, which said statements are more particularly set out in the record herein, and by the affidavit of Mr. Gabbs, foreman of the petit jury, and other jurors. Said affidavits are set forth in Assignment of Error Number IX.

Eighth. The Court erred in overruling defendant's motion filed herein on the 18th day of January, 1915, which is as follows:

Nos. 1034-B, 1035-B, 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corporation,

Defendant.

Motion.

Comes now, the defendant in the above-entitled cause by its attorneys M. G. Munly and Winn & Burton, and moves the Court [69] that the verdict of the jury to the indictments in the above-entitled cause be set aside or considered and treated as a verdict of acquittal, and that the defendant be discharged upon the following grounds and for the following reasons, to wit, viz.:

I.

Because the true verdict of the jury as expressed by the jurors through their foreman in open court at the close of the trial of the above-entitled cause and after they had retired to the jury-room and deliberated upon their verdict and at the time of bringing in their verdict into court, was in the effect that defendant had not violated the spirit of the law under which the aforesaid indictments were returned against the above-named defendant.

II.

Because the verdict of the jury to the effect that the defendant had not violated the spirit of the law is the equivalent of a general verdict of "not guilty."

III.

Because such a verdict does not affirmatively find the defendant guilty of all the elements of the crime charged in the indictments.

IV.

Because sentence cannot be passed upon a defendant based upon a verdict other than that of guilty, and the true verdict of the jury in this case was to the

effect that the defendant was not guilty of a violation of the spirit of the law.

V.

Because any judgment which might be rendered in the above-entitled cause based upon a verdict of guilty would be founded upon a verdict which does not specifically find the defendant guilty of all the elements constituting the offense or offenses charged in the indictment and such judgment would be null and void.

VI.

Because said verdict is not responsive to the issues.

M. G. MUNLY,
WINN & BURTON,
Attorneys for Defendant.

Ninth. The Court erred in overruling and denying defendant's motion for a new trial herein, which said motion with the affidavits in support thereof are as follows: [70]

Nos. 1034-B, 1035-B, 1036-B—Consolidated.
UNITED STATES OF AMERICA,
Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corporation,
Defendant.

Motion for New Trial.

Comes now the above-named defendant, by its attorneys, M. G. Munly and Winn & Burton, in each of the above-entitled numbered causes consolidated, and feeling itself aggrieved herein, moves the Court

to set aside each and all of the verdicts rendered in said causes No. 1034-B, 1035-B and 1036-B against the said defendant in each of said causes and filed in this court on the 30th day of October, A. D. 1914, for the following reasons and following causes materially affecting the substantial right of said defendant.

First. Irregularity in the proceedings of the Court and jury and order and orders of the Court made at the time and upon the reception of the verdict herein, and abuse of discretion of the Court by said actions, rulings and orders of said Court by which the said defendant was prevented from having a fair trial herein; which said irregularities in the proceedings of the Court and jury, and rulings and orders of the Court so made, showing such abuse of discretion will more particularly appear by the affidavits of A. A. Gabbs, Z. M. Bradford, Joe Pippin, J. L. Gage, Charles H. Hall and Wallis George, jurors, hereto attached, and the stenographic report of the rulings, orders and actions of the Court at the time and upon receiving and filing the verdicts herein.

Second. Insufficiency of the evidence to justify the aforesaid verdicts and each and all of them rendered in the above-entitled causes consolidated, and said verdicts and each and all of them are against law.

Third. Error in law occurring at the trial and excepted to by the defendants.

M. G. MUNLY and
WINN & BURTON,
Attorneys for Defendant.

Nos. 1034-B, 1035-B, 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

United States of America,
Territory of Alaska,—ss.**Affidavit.**

J. R. Homer, Wallis George, Z. M. Bradford, D. W. Fales and Charles H. Hall each for himself being first duly sworn on oath deposes and says: That I was one of the members of the trial jury in the above case. Upon entering the courtroom to report on our verdict, after the jury had responded to [71] the roll-call, the question was asked by the judge as to whether the jury had agreed on the verdict, and the foreman, A. A. Gabbs, declared that we had, and asked the judge in open court as to whether it were possible for us to make any recommendations qualifying or amending the verdict. The judge asked as to what recommendation or qualifications we wanted, and the foreman thereupon made the statement that, while we believed the defendant had not complied with the letter of the law, still we felt that it had complied with the spirit of the law and wanted to recommend leniency. At that time Judge Winn arose and asked for a court stenographer as he wanted a record of that statement, and Judge Jen-

nings refused to call a stenographer and said to Judge Winn, "I will not order the court stenographer to take such statement," or words to that effect, and then, speaking towards the jury Judge Jennings said, "What you mean is a recommendation to the Court for mercy, and, if so, you may write it in your verdict," or words to that effect. Thereupon in the open court, the foreman wrote in each verdict a recommendation for clemency of the Court, and handed the verdict to the clerk. Afterwards Judge Winn arose and asked to have the jury polled, and again called for a court stenographer and at that time the court stenographer appeared. After the jury was polled, Judge Jennings, turning to said foreman of the jury, said, "Now, you may make the statement you did on bringing in your verdict," or words to that effect, and the foreman repeated substantially his original statement to the Court.

J. R. HOMER.

WALLIS GEORGE.

Z. M. BRADFORD.

D. W. FALES.

CHARLES H. HALL.

Subscribed and sworn to before me this 31st day of October, A. D. 1914.

NEWARK L. BURTON,

Notary Public for Alaska.

My commission expires November 8, 1917.

Nos. 1034-B, 1035-B, 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

United States of America,
Territory of Alaska,—ss.**Affidavit.**

A. A. Gabbs, being first duly sworn on oath deposes and says: That I acted as foreman of the trial jury in the above cases. Upon entering the courtroom to report on our verdict after the jury had responded to the roll-call, the question was asked by the judge as to whether the jury had agreed on the verdict and I as foreman declared that we had and asked the judge in the open court as to whether it were possible for us to make any [72] recommendations qualifying or amending the verdict. The judge asked as to what recommendations or qualifications we wanted, and I thereupon made the statement that while we believed the defendant had not complied with the letter of the law, still we felt that it had complied with the spirit of the law and wanted to recommend leniency. At that time Judge Winn arose and asked for a court stenographer as he wanted a record of that statement, and Judge Jennings refused to call a stenographer and said to Judge Winn, "I will not order the court stenog-

rapher to take such statement" or words to that effect, and then, speaking towards the jury Judge Jennings said, "What you mean is a recommendation to the Court for mercy, and, if so, you may write it in your verdict," or words to that effect. Thereupon in the open court I wrote in each verdict a recommendation for clemency of the Court and handed the verdict to the clerk. Afterwards Judge Winn arose and asked to have the jury polled, and again called for a court stenographer and at that time the court stenographer appeared. After the jury was polled, Judge Jennings, turning to me as foreman of the jury, said, "Now you may make the statement you did on bringing in your verdict," or words to that effect, and I thereupon repeated substantially my original statement to the Court.

A. A. GABBS.

Subscribed and sworn to before me this 31st day of October, A. D. 1914.

NEWARK L. BURTON,
Notary Public for Alaska.

My commission expires November 8, 1917.

Tenth. The Court erred in sentencing the said defendant to pay a fine herein in the sum of \$100.00 and entering and filing the judgment herein against said defendant for said amount, which said judgment was entered and filed in this case on the 31st day of March, 1915.

M. G. MUNLY and
WINN & BURTON,
Attorneys for Defendant.

Copy of the foregoing Assignment of Error re-

ceived this — day of June, A. D. 1915 and service admitted.

JAMES A. SMISER,
United States District Attorney for the District of
Alaska, Division Number One. Atty for Plff.

JNO. J. REAGAN,
Asst. U. S. Atty.

[Endorsed]: No. 1035-B. In the District Court for the Territory of Alaska, Division No. 1. United States of America, Plaintiff, vs. Thlinket Packing Company, a Corporation, Defendant. Assignment of Error. Winn & Burton, Attorneys for Defendant. Juneau, Alaska. Filed in the District Court, District of Alaska, First Division. Jun. 11, 1915. J. W. Bell, Clerk. By C. Z. Denny, Deputy. [73]

In the District Court for the District of Alaska, Division No. 1, at Juneau.

No. 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corporation,
Defendant.

Assignment of Errors.

Comes now the above-named defendant in the above-entitled case No. 1036-B, which said case is consolidated for trial with cases Nos. 1035-B and 1034-B, and assigns the following errors committed

by the Court on the trial and determination of the said case No. 1036-B, and upon which said errors said defendant will rely upon its prosecution of the Writ of Error in said case and the errors that it will rely on in the Appellate Court:

First. That the Court erred in overruling defendant's demurrer in said case No. 1036-B, which said order was made and entered in said case on the 21st day of September, 1914, before the consolidation of said case for trial with the other two cases mentioned herein. Such ruling was excepted to by the defendant and exception allowed.

Second. The Court erred in not granting the defendant a separate trial in each of said cases mentioned herein, [74] and in making an order, over defendant's objections, consolidating and trying said three cases at one time, which said ruling of the Court was at the time excepted to and exception allowed.

Third. The Court erred in overruling the defendant's objections to the introduction of any testimony or evidence or receiving any evidence by the Court pertaining to any of the alleged charges made in said indictment, or any evidence or testimony which the plaintiff offered to establish defendant's guilt of any of the counts set forth in said indictment, which said objections were presented to and filed with the Court after the empaneling of the jury in said consolidated case and after the first witness on the part of the plaintiff was sworn to testify, which said objections are as follows:

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

Nos. 1034-B, 1035-B, 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

Objections.

Come now M. G. Munly and Winn & Burton attorneys for the Thlinket Packing Company, a corporation, in the three indictments in this Court against the said Thlinket Packing Company, to wit: Indictment Nos. 1034-B, 1035-B, 1036-B, and after the empaneling of the jury and the first witness on the part of the plaintiff, the United States, being sworn to testify concerning the alleged crime set forth in each and all of the counts set out in the foregoing indictments, and object to any testimony or evidence being introduced, offered or received by this Court pertaining to any of the alleged charges in each and every indictment, and in each and every count set forth in the same upon the following grounds and for the following reasons:

1. That each several indictment and every count thereof does not charge the offense defined and set out in the statute. That each several indictment and every count thereof fails to charge that defend-

ant did unlawfully fish for, take [75] or kill salmon of any species.

3. That each several indictment and every count thereof does not set forth the facts constituting the alleged offense in such manner as to apprise the defendant of the nature of the charge which he is called upon to defend.

4. That each several indictment and every count thereof fails to allege that said alleged fishing was done during the weekly close season.

5. That each several indictment and every count thereof does not allege or set out any particulars or facts as to the closing of the tunnels, or the facts with regard to the raising or lowering of the webbing of the heart next to the pot in such manner as to permit the free passage of salmon and other fishes, in such a way as to embrace every element of the offense defined by the statute.

6. That each several indictment and every count thereof fails to allege that the locality where such fishing was done was not in the districts or places excepted from the statute viz.: that it was not in Cook's Inlet, the Delta of Copper River, Bering Sea, or waters tributary thereto; or that it was not with one of the excepted forms of gear, viz.: rod, spear or gaff.

7. That each several indictment and every count thereof fails to charge the offense denounced by the statute in such manner as to enable a person of common understanding to know what is intended, and the offense is not alleged with such a degree of certainty as to enable the Court to pronounce judgment in case

of conviction according to the right of the case.

M. G. MUNLY and

WINN & BURTON,

Attorneys for Defendant.

Three and One Half: While the witness Earnest P. Walker was on the witness-stand in behalf of the plaintiff the following questions were propounded him by the Government's attorney, which were objected to by the defendant.

Q. Mr. Walker, will you state where the traps are situated that you have testified to here?

Mr. WINN.—We object to the question for the reason that it is incompetent, irrelevant and immaterial under the charges made in the indictments. That insomuch as they haven't set forth in these indictments that the traps are not in open waters or open fields where they can be fished at any and all times and all seasons, the question cannot be answered and no proof can be made thereof for the reason that it hasn't been properly pleaded in the indictments.

The COURT.—The objection will be overruled.

Q. (By Mr. REAGAN.) In what waters?

Mr. WINN.—We object.

The COURT.—Same ruling.

A. The waters of Icy Straits and Chatam Straits in that district.

To the introduction of such testimony an exception was allowed and the Court erred in admitting said evidence over defendant's objection.

Fourth. The Court erred in overruling and denying defendant's motion, filed at the close of plain-

tiff's case and when it rested its case, which said motion requested the Court to grant an instructed verdict in favor of the defendant, the Thlinket Packing Company, or to dismiss said case and grant a nonsuit therein for the lack or want of evidence to establish defendant's guilt of any of the charges set forth in the different counts or any one of the counts set forth in said indictment, which said motion was duly made, filed and presented to the Court, overruled and denied and an exception allowed to the defendant. [76]

The said motion so made and filed with the Court, as aforesaid, is as follows:

Come now M. G. Munly and Winn & Burton, attorneys for the Thlinket Packing Company, a corporation, in the three indictments in this court against the said Thlinket Packing Company, to wit: Indictments Nos. 1034-B, 1035-B and 1036-B, and attorneys for said company in all the counts in each and all of those indictments, and move the Court to direct the jury to bring in a verdict in favor of the Thlinket Packing Company, or to dismiss the proceedings for want of evidence to establish each and all of the counts, or any of the counts, set out in the three indictments above mentioned, upon the following grounds and for the following reasons:

First. That each several indictment and every count therein does not charge the offense defined and set out in the statute; that each several indictment and every count thereof fails to charge that the defendant did unlawfully fish for, take, or kill salmon of any species.

Second. That there is no evidence to establish such fact in the case; that each and all of the several indictments, and each count thereof, did not allege that the defendant failed to close the gate, mouth or tunnel, or raise or lower the heart next to the pot in a trap that is designed and used by the defendant to fish for, take or kill salmon of any species, and that there is no evidence in the case to establish such fact.

Third. That each of the several indictments and every count therein does not set forth the facts constituting the alleged offense in such manner as to apprise the defendant of the nature of the charge of which he is called upon to defend.

Fourth. That each several indictment, and every count thereof, fails to allege that the said alleged fishing was done during the closed season.

Fifth. That each several indictment and every count thereof does not allege or set out any particulars or facts as to the closing of the tunnels or the facts with regard to the raising or lowering of the webbing of the heart next to the pot in such manner as to prevent the free passage of salmon in such a way as to embrace every element of the offense defined by the statute.

Sixth. That each several indictment and every count thereof fails to allege that the locality where such fishing was done was not in the district or place excepted from the statute, that is, it was not in Cook's Inlet, the Delta of the Copper River, Bering Sea, or waters tributary thereto, or that it was not with one of the excepted forms of gear, viz: rod, spear, or gaff, and that there is no evidence now before the jury to

show as to whether or not, if any crime was committed, that it was committed within the prohibited districts of the waters of Alaska as defined by the section under which the indictments are made.

Seventh. That each several indictment and every count thereof fails to charge the offense denounced by the statute in such a manner as to enable a person of common understanding to know what is intended, and the offense is not alleged with such a degree of certainty as to enable the Court to pronounce judgment in case of conviction according to the right of the case.

Eighth. That there is no evidence in the case on the part of the Government to disprove the fact or to show as to whether or not the way the respective traps were opened that there could or could not be a free passage of salmon and other fishes, counsel for the defendant company claiming that the reasonable construction of the statute is that if the trap was open in such a way so that it did not prevent the free passage of salmon and [77] other fishes, then the spirit of the statute is complied with; that the only thing the statute is intended to prohibit is the free running of salmon and other fishes, and that is an element which it is incumbent upon the Government to establish before it can establish any charge against the defendant company.

Fifth. The Court erred in failing and refusing to instruct the jury as requested by the defendant and to give to the said jury the instructions or any of them tendered and requested in said case by said defendant and its attorneys at the close of all the tes-

timony and evidence on the part of plaintiff and defendant, which said refusal of the Court to so instruct the jury was duly excepted to by plaintiff and exception allowed. The said instructions so offered and requested by defendant and on file herein are as follows, to wit:

Nos. 1034-B, 1035-B, 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corporation,

Defendant.

Instructions.

INSTRUCTION NO. 1.

Gentlemen of the Jury, this is a criminal case consisting of three indictments against the defendant, and each indictment containing two or more counts or charges, each countercharge claiming on the specific date mentioned therein that the defendant violated the fishing laws of Alaska by reason of maintaining and operating certain fish-traps and failing to, in some instances or some of the counts, to raise or lower the web of that part of the trap known as the heart, as required by law, and in other counts charging this last matter and also the failure to close what is known as the tunnel leading from the heart of the trap to the pot, as required by law. It is necessary for the Government to prove these facts last mentioned beyond a reasonable doubt before you would be justified in finding the defendant guilty of

any one or more of the counts contained in the three indictments referred to herein. And should the Government fail to prove to your mind beyond a reasonable doubt that the facts mentioned herein are true, then, it is your duty to acquit the defendant.

INSTRUCTION NO. 2.

I also instruct you, Gentlemen of the Jury, that the purpose and spirit of the law is to protect salmon so that they may not be obstructed in their passage to their spawning ground during the weekly close season. Unless the Government in this case prove to your mind beyond a reasonable doubt that the web of [78] the heart of any trap described in any of these various indictments or various counts was not raised, opened or lowered in such a manner as to permit the free passage of salmon or other fishes to escape and go to their spawning ground, then, it is your duty to return a verdict of "Not Guilty" herein.

INSTRUCTION NO. 3.

The statute provides that 25 feet of the webbing on each side of the heart next to the pot shall be lifted or lowered in such manner as to permit the free passage of salmon or other fishes during the weekly close season. As a matter of fact, if you find in any of the cases or charges against the defendant that 25 feet of the webbing of the heart was so lifted or lowered to permit the free passage of salmon or other fishes, your verdict must be for the defendant, and in this connection the statute does not mean that 25 feet of the heart of a trap must be raised or lowered vertically; if 25 feet of the webbing is lifted or lowered in a "V" shape but yet in such manner

as to permit the free passage of salmon and other fishes such opening is a sufficient compliance with the statute and your verdict must be for the defendant.

INSTRUCTION No. 4.

The language of the statute is that 25 feet of the webbing on each side of the heart next to the pot shall be lifted or lowered in such manner as to permit the free passage of salmon and other fishes. That does not mean 25 feet square or that 25 feet must be torn out of the sides of the heart every weekly close season. Any manner of lowering or lifting 25 feet of the heart so as to permit the free passage of salmon and other fishes so that they may go on through the trap to their spawning ground is sufficient. And if you find as to any of the charges in these indictments that the heart of any trap was so lifted or lowered or opened, your verdict must be for the defendant.

INSTRUCTION No. 5.

I also instruct you that the right of fishing, or of fishery as it is called, is common and free to every citizen. The government has, however, the power to regulate and restrict it. This right to free fishing can only be limited or taken away just as far as any such regulations go; and, therefore, the regulations regarding salmon traps during the weekly close season established by the Government cannot be extended or expanded beyond their strict meaning. The statute says that:

“Throughout the weekly close season herein prescribed, the gate, mouth or tunnel of all sta-

tionary and floating traps shall be closed, and twenty-five feet of the webbing or net of the 'heart' of such traps on each side of the 'pot' shall be lifted or lowered in such manner as to permit the free passage of salmon and other fishes."

Unless the language of the statute itself provided that twenty-five feet of the heart on each side next to the pot should be lifted or lowered from the top to the bottom of the heart, it would be adding to the statute to say so.

You must consider the law as it is. You must determine from the evidence whether 25 feet of the web of the heart on each side of the pot was lifted or lowered in such manner as to permit the free passage of salmon and other fishes. If you find that it was so lowered or lifted in any of the charges against this defendant alleged in the various indictments, you must acquit the defendant. [79]

Sixth. The Court erred in giving to the jury the following instruction:

"Now, that is a positive demand, gentlemen, that twenty-five feet of that net of the heart next to the pot shall be either lifted or lowered, twenty-five feet of it, and it is not only a command that twenty-five feet of it be lifted or lowered, but it is also a command that that twenty-five feet be lifted or lowered in a certain particular manner and to accomplish a certain particular end. Now, take that window-pane just over you—you see a string hanging down that seems to divide that window-pane in two parts.

Suppose that window-pane were actually in two separate parts, so each part could be lowered or raised and each part was twenty-five inches wide, and I asked you to please lower or raise twenty-five inches of that window next to this wall. (Indicating.) I cannot see how it means anything but that I am asking you to either raise or lower that part of the window. I am not asking you to shove the window back—I am not asking you to move the window this way or that way,—I am asking you to raise or lower it. Now, twenty-five feet of the webbing of the heart next to the pot can be raised or lowered, but it need not be horizontal all the way from one end to the other, but there must be twenty-five feet of it in the clear, raised or lowered in such a way as to permit the free passage of fish—salmon and other fishes—for the whole distance of twenty-five feet.”

To all of which said instruction defendant duly excepted at the time that same was given and an exception was allowed.

Seventh. The Court erred in receiving and filing the verdict of the jury in this case over defendant's objection made thereto, which said objection to the reception and filing of said verdict was made and based upon the statements made by Mr. Gabbs, the foreman of the jury, at the time the jury came into court to deliver its verdict, which said statements are more particularly set out in the record herein, and by the affidavit of Mr. Gabbs, foreman of the petit jury, and other jurors. Said affidavits are set

forth in Assignment of Error Number IX.

Eighth. The Court erred in overruling defendant's motion filed herein on the 18th day of January, 1915, which is as follows:

Nos. 1034-B, 1035-B, 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corporation,

Defendant.

Motion.

Comes now the defendant in the above-entitled cause by its attorneys M. G. Munly and Winn & Burton and moves the Court [80] that the verdict of the jury to the indictments in the above-entitled cause be set aside or considered and treated as a verdict of acquittal, and that the defendant be discharged upon the following grounds and for the following reasons, to wit:—*viz.*:

I.

Because the true verdict of the jury as expressed by the jurors through their foreman in open court at the close of the trial of the above-entitled cause and after they had retired to the jury-room and deliberated upon their verdict and at the time of bringing in their verdict into court, was to the effect that defendant had not violated the spirit of the law under which the aforesaid indictments were returned against the above named defendant.

II.

Because the verdict of the jury to the effect that the defendant had not violated the spirit of the law is the equivalent of a general verdict of "not guilty."

III.

Because such a verdict does not affirmatively find the defendant guilty of all the elements of the crime charged in the indictments.

IV.

Because sentence cannot be passed upon a defendant based upon a verdict other than that of guilty, and the true verdict of the jury in this case was to the effect that the defendant was not guilty of a violation of the spirit of the law.

V.

Because any judgment which might be rendered in the above-entitled cause based upon a verdict of guilty would be founded upon a verdict which does not specifically find the defendant guilty of all the elements constituting the offense or offenses charged in the indictment and such judgment would be null and void.

VI.

Because said verdict is not responsive to the issues.

M. G. MUNLY,
WINN & BURTON,

Attorneys for Defendant.

Ninth. The Court erred in overruling and denying defendant's motion for a new trial herein, which

said motion with the affidavits in support thereof are as follows: [81]

Nos. 1034-B, 1035-B, 1036-B—Consolidated.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

Motion for New Trial.

Comes now the above-named defendant, by its attorneys, M. G. Munly and Winn & Burton, in each of the above-entitled numbered causes consolidated, and feeling itself aggrieved herein, moves the Court to set aside each and all of the verdicts rendered in said causes No. 1034-B, 1035-B and 1036-B against the said defendant in each of said causes and filed in this court on the 30th day of October, A. D. 1914, for the following reasons and following causes materially affecting the substantial right of said defendant.

First. Irregularity in the proceedings of the Court and jury and order *and orders* of the Court made at the time and upon the reception of the verdict herein, and abuse of discretion of the Court by said actions, rulings and orders of said Court by which the said defendant was prevented from having a fair trial herein; which said irregularities in the proceedings of the Court and jury, and rulings and orders of the Court so made, showing such abuse of discretion will more particularly appear by the

affidavits of A. A. Gabbs, Z. M. Bradford, Joe Pip-pin, J. L. Gage, Charles H. Hall and Wallis George, jurors, hereto attached, and the stenographic report of the rulings, orders and actions of the Court at the time and upon receiving and filing the verdicts herein.

Second. Insufficiency of the evidence to justify the aforesaid verdicts and each and all of them rendered in the above-entitled causes consolidated, and said verdicts and each and all of them are against law.

Third. Error in law occurring at the trial and excepted to by the defendants.

M. G. MUNLY and
WINN & BURTON,
Attorneys for Defendant.

Nos. 1034-B, 1035-B, 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

Affidavit.

United States of America,
Territory of Alaska,—ss.

J. R. Homer, Wallis George, Z. M. Bradford, D. W. Fales and Charles H. Hall each for himself being first duly sworn on oath deposes and says: That I was one of the members of the trial jury in the above case. Upon entering the courtroom to report on our

verdict, after the jury had responded to [82] the roll-call, the question was asked by the judge as to whether the jury had agreed on the verdict, and the foreman, A. A. Gabbs, declared that we had, and asked the judge in open court as to whether it were possible for us to make any recommendations qualifying or amending the verdict. The judge asked as to what recommendation or qualifications we wanted, and the foreman thereupon made the statement that, while we believed the defendant had not complied with the letter of the law, still we felt that it had complied with the spirit of the law and wanted to recommend leniency. At that time Judge Winn arose and asked for a court stenographer as he wanted a record of that statement, and Judge Jennings refused to call a stenographer and said to Judge Winn, "I will not order the court stenographer to take such statement," or words to that effect and then, speaking towards the jury, Judge Jennings, said, "What you mean is a recommendation to the Court for mercy, and, if so, you may write it in your verdict," or words to that effect. Thereupon in the open court, the foreman wrote in each verdict a recommendation for clemency of the Court, and handed the verdict to the clerk. Afterwards Judge Winn arose and asked to have the jury polled, and again called for a court stenographer and at that time the court stenographer appeared. After the jury was polled, Judge Jennings, turning to said foreman of the jury, said, "Now, you may make the statement you did on bringing in your verdict," or words to that effect, and the foreman re-

peated substantially his original statement to the Court.

J. R. HOMER.
WALLIS GEORGE.
Z. M. BRADFORD.
D. W. FALES.
CHARLES H. HALL.

Subscribed and sworn to before me this 31st day of October, A. D. 1914.

NEWARK L. BURTON,
Notary Public for Alaska.

My commission expires November 8, 1917.

Nos. 1034-B, 1035-B, 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

Affidavit.

United States of America,
Territory of Alaska,—ss.

A. A. Gabbs, being first duly sworn, on oath deposes and says: that I acted as foreman of the trial jury in the above cases. Upon entering the courtroom to report on our verdict after the jury had responded to the roll-call, the question was asked by the judge as to whether the jury had agreed on the verdict and I as foreman declared that we had

and asked the judge in the open court as to whether it were possible for us to make any [83] recommendations qualifying or amending the verdict. The Judge asked as to what recommendations or qualifications we wanted, and I thereupon made the statement that, while we believed the defendant had not complied with the letter of the law, still we felt that it had complied with the spirit of the law and wanted to recommend leniency. At that time Judge Winn arose and asked for a court stenographer as he wanted a record of that statement, and Judge Jennings refused to call a stenographer and said to Judge Winn, "I will not order the court stenographer to take such statement" or words to that effect, and then, speaking towards the jury Judge Jennings said, "What you mean is a recommendation to the Court for mercy, and, if so, you may write it in your verdict," or words to that effect. Thereupon in the open court I wrote in each verdict a recommendation for clemency of the Court and handed the verdict to the clerk. Afterwards Judge Winn arose and asked to have the jury polled, and again called for a court stenographer and at that time the court stenographer appeared. After the jury was polled, Judge Jennings, turning to me as foreman of the jury, said, "Now, you may make the statement you did on bringing in your verdict," or words to that effect, and I thereupon repeated substantially my original statement to the Court.

A. A. GABBS.

Subscribed and sworn to before me this 31st day of October, A. D. 1914.

NEWARK L. BURTON,
Notary Public for Alaska.

My commission expires November 8, 1917.

Tenth. The Court erred in sentencing the said defendant to pay a fine herein in the sum of \$100.00 and entering and filing the judgment herein against said defendant for said amount, which said judgment was entered and filed in this case on the 31st day of March, 1915.

M. G. MUNLY and
WINN & BURTON,
Attorneys for Defendant.

Copy of the foregoing Assignment of Error received this —— day of June, A. D. 1915, and service admitted.

JAMES A. SMISER,
United States District Attorney for the District of
Alaska, Division Number One.

Atty. for Plff.
By JNO. J. REAGAN,
Asst. U. S. Atty.

[Endorsed]: No. 1036-B. In the District Court for the Territory of Alaska, Division No. 1. United States of America, Plaintiff, vs. Thlinket Packing Company, a Corporation, Defendant. Assignment of Error. Winn & Burton, Attorneys for Defendant. Juneau, Alaska. Filed in the District Court, District of Alaska. First Division. Jun. 11, 1915. J. W. Bell, Clerk. By C. Z. Denny, Deputy. [84]

OFFICE COPY.

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1034-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

Petition for Writ of Error.

To the Honorable R. W. JENNINGS, Judge of the
Above-entitled Court:

Comes now the Thlinket Packing Company, a corporation, the defendant herein, and complains and states that on the 30th day of October, 1914, the jury returned a verdict herein finding the said defendant guilty of the crime charged in the indictment in this case, and on the 31st day of March, 1915, the above-entitled court rendered judgment on said verdict and sentenced the said defendant to pay a fine of \$100.00, and in proceedings had prior thereto in the above-entitled case, certain errors were committed to the prejudice of this defendant, all of which will appear in detail from the Assignment of Errors which is filed with this Petition; and the defendant feeling itself aggrieved by said verdict, judgment, sentence and errors complained of, petitions and prays this Honorable Court for an order allowing the defendant to prosecute a Writ of Error

in the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws in such cases made and provided for the correction of the errors complained of; and that a transcript of the record [85] and proceedings with all things concerning the same, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

And defendant further prays for an order fixing the amount for a supersedeas in said cause and that an order be made staying proceedings and execution in said case until the further order of the said Court of Appeals, and pending the prosecution of its said Writ of Error as aforesaid.

JNO. R. WINN,

WINN & BURTON,

Attorneys for Defendant.

Due service of a copy of the within Petition for Writ of Error is admitted this 23d day of June, 1915.

JNO. J. REAGAN,

Asst. United States District Attorney for the District of Alaska, Division Number One.

[Endorsed]: No. 1034-B. In the District Court for the Territory of Alaska, Division No. 1. United States of America, Plaintiff, vs. Thlinket Packing Company, a corporation, Defendant. Petition for Writ of Error. Winn & Burton, Attorneys for Defendant, Juneau, Alaska. Filed in the District Court, District of Alaska, First Division. Jun. 23, 1915. J. W. Bell, Clerk. [86]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1035-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

Petition for Writ of Error.

To the Honorable R. W. JENNINGS, Judge of the
Above-entitled Court:

Comes now the Thlinket Packing Company, a corporation, the defendant herein, and complains and states that on the 30th day of October, 1914, the jury returned a verdict herein finding the said defendant guilty of the crime charged in the indictment in this case, and on the 31st day of March, 1915, the above-entitled court rendered judgment on said verdict and sentenced the said defendant to pay a fine of \$100.00, and in proceedings had prior thereto in the above-entitled case, certain errors were committed to the prejudice of this defendant, all of which will appear in detail from the Assignment of Errors which is filed with this Petition; and the defendant feeling itself aggrieved by said verdict, judgment, sentence and errors complained of, petitions and prays this Honorable Court for an order allowing the defendant to prosecute a Writ of Error in the United States Circuit Court of Appeals

for the Ninth Circuit, under and according to the laws in such cases made and provided for the correction of the errors complained of; and that a transcript of the record [87] and proceedings with all things concerning the same, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

And defendant further prays for an order fixing the amount for a supersedeas in said cause and that an order be made staying proceedings and execution in said case until the further order of said Court of Appeals, and pending the prosecution of its said Writ of Error as aforesaid.

JNO. R. WINN and
WINN and BURTON,
Attorneys for Defendant.

Due service of a copy of the within Petition for Writ of Error is admitted this 23d day of June, 1915.

JNO. J. REAGAN,
Asst. United States District Attorney for the District of Alaska, Division Number One.

[Endorsed]: No. 1035-B. In the District Court for the Territory of Alaska, Division No. 1. United States of America, Plaintiff, vs. Thlinket Packing Company, a Corporation, Defendant. Petition for Writ of Error. Winn & Burton, Attorneys for Defendant, Juneau, Alaska. Filed in the District Court, District of Alaska, First Division. Jun. 23, 1915. J. W. Bell, Clerk. [88]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

Petition for Writ of Error.

To the Honorable R. W. JENNINGS, Judge of the
Above-entitled Court:

Comes now the Thlinket Packing Company, a corporation, the defendant herein, and complains and states that on the 30th day of October, 1914, the jury returned a verdict herein finding the said defendant guilty of the crime charged in the indictment in this case, and on the 31st day of March, 1915, the above-entitled Court rendered judgment on said verdict and sentenced the said defendant to pay a fine of \$100.00, and in proceedings had prior thereto in the above-entitled case, certain errors were committed to the prejudice of this defendant, all of which will appear in detail from the Assignment of Errors which is filed with this petition; and the defendant feeling itself aggrieved by said verdict, judgment, sentence and errors complained of, petitions and prays this Honorable Court for an order allowing the defendant to prosecute a Writ of Error in the

United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws in such cases made and provided for the correction of the errors complained of; and that a transcript of the record [89] and proceedings with all things concerning the same, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

And defendant further prays for an order fixing the amount for a supersedeas in said cause and that an order be made staying proceedings and execution in said case until the further order of the said Court of Appeals, and pending the prosecution of its said Writ of Error as aforesaid.

JNO. R. WINN and
WINN & BURTON,
Attorneys for Defendant.

Due service of a copy of the within Petition for Writ of Error is admitted this 23d day of June, 1915.

JNO. J. REAGAN,
Asst. United States District Attorney for the District of Alaska, Division Number One.

[Endorsed]: No. 1036-B. In the District Court for the Territory of Alaska, Division No. 1, United States of America, Plaintiff, vs. Thlinket Packing Company, Defendant. Petition for Writ of Error. Winn & Burton, Attorneys for Defendant, Juneau, Alaska. Filed in the District Court, District of Alaska, First Division. Jun. 23, 1915. J. W. Bell, Clerk. [90]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1034-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

Order Allowing Writ of Error.

Upon the filing by defendant in the above-entitled action of the Petition for a Writ of Error and Assignment of Errors, together with a Bill of Exceptions,

IT IS HEREBY ORDERED that a Writ of Error be, and the same is hereby, allowed, to have the Judgment of this Court reviewed by the Circuit Court of Appeals for the Ninth Circuit as prayed for in said Petition; and

IT IS FURTHER ORDERED that upon the said defendant filing a good and sufficient bond herein with sureties approved by this Court in the sum of \$400.00, that all proceedings and execution herein be stayed and suspended pending the determination of said Writ of Error in said Court of Appeals.

Done in open court this 23d day of June, 1915.

ROBERT W. JENNINGS,

Judge.

[Endorsed]: No. 1034-B. In the District Court for the Territory of Alaska, Division No. 1, United

States of America, Plaintiff, vs. Thlinket Packing Company, a Corporation, Defendant. Order Allowing Writ of Error. Winn & Burton, Attorneys for Defendant, Juneau, Alaska. Filed in the District Court, District of Alaska, First Division. Jun. 23, 1915. J. W. Bell, Clerk. [91]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1035-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corporation,

Defendant.

Order Allowing Writ of Error.

Upon the filing by defendant in the above-entitled action of the Petition for a Writ of Error and Assignment of Errors, together with a Bill of Exceptions,

IT IS HEREBY ORDERED that a Writ of Error be, and the same is hereby, allowed, to have the Judgment of this Court reviewed by the Circuit Court of Appeals for the Ninth Circuit as prayed for in said Petition; and

IT IS FURTHER ORDERED that upon the said defendant filing a good and sufficient bond herein with sureties approved by this Court in the sum of \$400.00 that all proceedings and execution herein be

stayed and suspended pending the determination of said Writ of Error in said court of Appeals.

Done in open court this 23d day of June, 1915.

ROBERT W. JENNINGS,
Judge.

[Endorsed]: No. 1035-B. In the District Court for the Territory of Alaska, Division No. 1. United States of America, Plaintiff, vs. Thlinket Packing Company, a Corporation, Defendant. Order Allowing Writ of Error. Winn & Burton, Attorneys for Defendant, Juneau, Alaska. Filed in the District Court, District of Alaska, First Division. Jun. 23, 1915. J. W. Bell, Clerk. [92]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

Order Allowing Writ of Error.

Upon the filing by defendant in the above-entitled action of the Petition for a Writ of Error and Assignment of Errors, together with a Bill of Exceptions,

IT IS HEREBY ORDERED that a Writ of Error be, and the same is hereby, allowed, to have the Judg-

ment of this Court reviewed by the Circuit Court of Appeals for the Ninth Circuit as prayed for in said Petition; and

IT IS FURTHER ORDERED that upon the said defendant filing a good and sufficient bond herein with sureties approved by this Court in the sum of \$400.00 that all proceedings and execution herein be stayed and suspended pending the determination of said Writ of Error in said Court of Appeals.

Done in open court this 23d day of June, 1915.

ROBERT W. JENNINGS,
Judge.

[Endorsed]: No. 1036-B. In the District Court for the Territory of Alaska, Division No. 1. United States of America, Plaintiff, vs. Thlinket Packing Company, a Corporation, Defendant. Order Allowing Writ of Error. Winn & Burton, Attorneys for Defendant, Juneau, Alaska. Filed in the District Court, District of Alaska, First Division. Jun. 23, 1915. J. W. Bell, Clerk. [93]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1034-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

Writ of Error.

United States of America.

The President of the United States of America, to
the Honorable ROBERT W. JENNINGS,
Judge of the District Court for the District of
Alaska, Division Number One, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea in the said District Court before you, between the United States of America, Plaintiff, and Thlinket Packing Company, a Corporation, Defendant, manifest error hath happened to the great prejudice of the defendant, Thlinket Packing Company, as is stated and appears in the Petition herein.

We being willing that error, if any hath happened, should be duly corrected, and full and speedy justice be done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the United States Circuit Court of Appeals for the 9th Circuit, at San Francisco, California, together with this Writ, so that you have the same at said place before said Court on the 26th day of July, [94] 1915; that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct those errors, which of right and according to law and custom of the United States ought to be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States,

the 26th day of June, in the year of our Lord one thousand nine hundred and fifteen.

[Seal]

J. W. BELL,

Clerk of the District Court for the District of Alaska,
Division Number One.

Said Writ is by me allowed:

ROBERT W. JENNINGS,

Judge of the District Court for the District of
Alaska, Division Number One.

Copy of this Writ of Error received and service
acknowledged this 26th day of June, 1915.

JNO. J. REAGAN,

Asst. United States District Attorney for the First
Judicial Division, District of Alaska, and Attor-
ney for Plaintiff and Defendant in Error. [95]

[Endorsed]: No. 1034-B. In the District Court
for the Territory of Alaska, Division No. 1. United
States of America, Plaintiff, vs. Thlinket Packing
Company, a Corporation, Defendant. Writ of Er-
ror.

Filed in the District Court, District of Alaska,
First Division. Jun. 23, 1915. J. W. Bell, Clerk.
By —————, Deputy. [96]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1035-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

Writ of Error.

United States of America.

The President of the United States of America, to
the Honorable ROBERT W. JENNINGS,
Judge of the District Court for the District of
Alaska, Division Number One, Greeting:

Because in the record and proceedings, as also in
the rendition of the judgment of a plea in the said
District Court before you, between the United States
of America, Plaintiff, and Thlinket Packing Com-
pany, a Corporation, Defendant, manifest error hath
happened to the great prejudice of the defendant,
Thlinket Packing Company, as is stated and appears
in the Petition herein.

We being willing that error, if any hath happened,
should be duly corrected, and full and speedy justice
be done to the party aforesaid in this behalf, do com-
mand you, if judgment be therein given, that then,
under your seal, distinctly and openly, you send the
record and proceedings aforesaid with all things
concerning the same to the United States Circuit

Court of Appeals for the 9th Circuit, at San Francisco, California, together with this Writ, so that you have the same at said place before said Court on the 26th day of July, [97] 1915; that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct those errors, which of right and according to law and custom of the United States ought to be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, the 26th day of June, in the year of our Lord one thousand nine hundred and fifteen.

[Seal]

J. W. BELL,

Clerk of the District Court for the District of Alaska,
Division Number One.

Said Writ is by me allowed:

ROBERT W. JENNINGS,

Judge of the District Court for the District of
Alaska, Division Number One.

Copy of this Writ of Error received and service acknowledged this 26th day of June, 1915.

JNO. J. REAGAN,

Asst. United States District Attorney for the First
Judicial Division, District of Alaska, and Attor-
ney for Plaintiff and Defendant in Error. [98]

[Endorsed]: No. 1035-B. In the District Court for the Territory of Alaska, Division No. 1. United States of America, Plaintiff, vs. Thlinket Packing Company, a Corporation, Defendant. Writ of Error.

Filed in the District Court, District of Alaska,
First Division. Jun. 23, 1915. J. W. Bell, Clerk.
By —————, Deputy. [99]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1036-B.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,
Defendant.

Writ of Error.

United States of America.

The President of the United States of America, to
the Honorable ROBERT W. JENNINGS,
Judge of the District Court for the District of
Alaska, Division Number One, Greeting:

Because in the record and proceedings, as also in
the rendition of the judgment of a plea in the said
District Court before you, between the United States
of America, Plaintiff, and Thlinket Packing Com-
pany, a Corporation, Defendant, manifest error hath
happened to the great prejudice of the defendant,
Thlinket Packing Company, as is stated and appears
in the Petition herein.

We being willing that error, if any hath happened,
should be duly corrected, and full and speedy justice
be done to the party aforesaid in this behalf, do

command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the United States Circuit Court of Appeals for the 9th Circuit, at San Francisco, California, together with this Writ, so that you have the same at said place before said Court on the 26th day of July, [100] 1915; that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct those errors, which of right and according to law and custom of the United States ought to be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, the 26th day of June, in the year of our Lord one thousand nine hundred and fifteen.

[Seal]

J. W. BELL,

Clerk of the District Court for the District of Alaska,
Division Number One.

Said Writ is by me allowed.

ROBERT W. JENNINGS,

Judge of the District Court for the District of
Alaska, Division Number One.

Copy of this Writ of Error received and service
acknowledged this 26th day of June, 1915.

JNO. J. REAGAN,

Asst. United States District Attorney for the First
Judicial Division, District of Alaska, and At-
torney for Plaintiff and Defendant in Error.

[101]

[Endorsed]: No. 1036-B. In the District Court for the Territory of Alaska, Division No. 1. United States of America, Plaintiff, vs. Thlinket Packing Company, a Corporation, Defendant. Writ of Error. Filed in the District Court, District of Alaska, First Division. Jun. 23, 1915. J. W. Bell, Clerk. By _____, Deputy. [102]

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 1034-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

Citation (on Writ of Error).

United States of America,

The President of the United States to the United States of America, and JAMES M. SMISER, District Attorney for the First Judicial Division, District of Alaska, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at the courtroom of said court in the city of San Francisco, in the State of California, within 30 days from the date of the service upon you and date of this citation, pursuant to a Writ of Error filed in the United States District

Court for the District of Alaska, Division Number One, at Juneau, Alaska, wherein the United States of America is plaintiff, or defendant in error, and the Thlinket Packing Company, a corporation, defendant, or plaintiff in error, to show cause, if any there be, why the judgment in said Writ of Error should not be [103] corrected and speedy justice should not be done to the parties in this behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, the 26th day of June, in the year of our Lord, one thousand nine hundred and fifteen.

ROBERT W. JENNINGS,
Judge of the District Court, for the District of
Alaska, Division Number One.

Copy of this Citation received and service acknowledged this 26th day of June, A. D. 1915.

JNO. J. REAGAN,
Asst. United States District Attorney for the District of Alaska, Division Number One, and Attorney for the Plaintiff, or Defendant in Error.
[104]

[Endorsed]: No. 1034-B. In the District Court for the Territory of Alaska, Division No. 1. United States of America, Plaintiff, vs. Thlinket Packing Company, a Corporation, Defendant. Citation. Filed in the District Court, District of Alaska, First Division. Jun. 26, 1915. J. W. Bell, Clerk. By _____, Deputy. [105]

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 1035-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

Citation (on Writ of Error).

United States of America.

The President of the United States to the United
States of America, and JAMES M. SMISER,
District Attorney for the First Judicial Division,
District of Alaska, Greeting:

You are hereby cited and admonished to be and
appear in the United States Circuit Court of Ap-
peals for the Ninth Circuit at the courtroom of said
court in the city of San Francisco, in the State of
California, within 30 days from the date of the
service upon you and date of this citation, pursuant
to a Writ of Error filed in the United States District
Court for the District of Alaska, Division Number
One, at Juneau, Alaska, wherein the United States
of America is plaintiff, or defendant in error, and
the Thlinket Packing Company, a corporation, de-
fendant, or plaintiff in error, to show cause, if any
there be, why the judgment in said Writ of Error
should not be [106] corrected and speedy justice
should not be done to the parties in this behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, the 26th day of June, in the year of our Lord, one thousand nine hundred and fifteen.

ROBERT W. JENNINGS,
Judge of the District Court for the District of
Alaska, Division Number One.

Copy of this Citation received and service acknowledged this 26th day of June, A. D. 1915.

JNO. J. REAGAN,
Asst. United States District Attorney for the District of Alaska, Division Number One, and Attorney for the Plaintiff, or Defendant in Error.
[107]

[Endorsed]: No. 1035-B. In the District Court for the Territory of Alaska, Division No. 1. United States of America, Plaintiff, vs. Thlinket Packing Company, a Corporation, Defendant. Citation. Filed in the District Court, District of Alaska, First Division. Jun. 26, 1915. J. W. Bell, Clerk. By _____, Deputy. [108]

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corporation,
tion,

Defendant.

Citation (on Writ of Error).

United States of America.

The President of the United States to the United States of America, and JAMES M. SMISER, District Attorney for the First Judicial Division, District of Alaska, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at the courtroom of said court in the city of San Francisco, in the State of California, within 30 days from the date of the service upon you and date of this citation, pursuant to a Writ of Error filed in the United States District Court for the District of Alaska, Division Number One, at Juneau, Alaska, wherein the United States of America is plaintiff, or defendant in error, and the Thlinket Packing Company, a corporation, defendant, or plaintiff in error, to show cause, if any there be, why the judgment in said Writ of Error should not be [109] corrected and speedy justice should not be done to the parties in this behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, the 26th day of June, in the year of our Lord, one thousand nine hundred and fifteen.

ROBERT W. JENNINGS,
Judge of the District Court for the District of
Alaska, Division Number One.

Copy of this Citation received and service acknowledged this 26th day of June, A. D. 1915.

JNO. J. REAGAN,

Asst. United States District Attorney for the District of Alaska, Division Number One, and Attorney for the Plaintiff, or Defendant in Error.
[110]

[Endorsed]: No. 1036-B. In the District Court for the Territory of Alaska, Division No. 1. United States of America, Plaintiff, vs. Thlinket Packing Company, a Corporation, Defendant. Citation. Filed in the District Court, District of Alaska, First Division. Jun. 26, 1915. J. W. Bell, Clerk. By _____ Deputy. [111]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1034-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corporation,
tion,

Defendant.

Undertaking [on Writ of Error in Case No. 1034-B].

KNOW ALL MEN BY THESE PRESENTS that we, the above-named defendant, Thlinket Packing Company, a corporation, as principal, and B. M. Behrends as surety, are held and firmly bound unto the United States of America in the penal sum of

\$400.00 for which payment well and truly made, we bind ourselves, each of ourselves, our successors in office, our heirs, and each of our heirs, executors, administrators, and assigns firmly by these presents.

Sealed with our seals and dated this 24th day of June, 1915.

The condition of the above obligation is such that whereas the above-named defendant, Thlinket Packing Company, a corporation, has sued out a Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment in the above-entitled case by the District Court for the District of Alaska, Division Number One, rendered entered and made by the said last mentioned court on the 31st day of March, 1915, and whereby, and by the terms of which the said defendant, Thlinket Packing Company, a corporation, was fined and sentenced [112] to pay a fine of the sum of \$100.00 for the crime complained of in the indictment in this case, to wit, the crime of unlawful fishing under section 5, Act of June 26, 1906, entitled, "An Act for the Protection and Regulation of the Fisheries of Alaska."

NOW, THEREFORE, the condition of this obligation is such if the above-named Thlinket Packing Company, a corporation, shall prosecute its Writ of Error to effect, and answer all costs and damages if it shall fail to make good its plea, and shall at all times render itself amenable to the orders and process of this court or the appellate court, and render itself in execution if the judgment of this court is affirmed, on any judgment of this court, or said

appellate court, or any court to which it may be appealed, or removed by Writ of Error, then this obligation shall be void; otherwise to remain in full force and virtue.

THLINKET PACKING COMPANY,

By JAS. T. BARRON,

President.

B. M. BEHREND'S.

O. K.—JNO. J. REAGAN,

Asst. U. S. Atty.

United States of America,

Territory of Alaska,—ss.

B. M. Behrends, being first duly sworn on oath deposes and says: That I am the surety on the foregoing bond; am a resident of the District of Alaska, but not an attorney at law, marshal, clerk of any court, or other officer of any court, and am qualified to be bail, and am worth double the sum specified in the foregoing undertaking, exclusive of property exempt from execution and over and above all just debts and liabilities.

B. M. BEHREND'S.

Subscribed and sworn to before me this 24th day of June, A. D. 1915.

[Seal]

GUY McNAUGHTON,

Notary Public for Alaska.

My commission expires Oct. 24th, 1916.

The foregoing Undertaking and Surety thereon examined and approved.

Done in open court this 26th day of June,
A. D. 1915.

ROBERT W. JENNINGS,

Judge. [113]

[Endorsed]: No. 1034-B. In the District Court for the Territory of Alaska, Division No. 1. United States of America, Plaintiff, vs. Thlinket Packing Company, a corporation, Defendant. Undertaking. Winn & Burton, Attorneys for Defendant. Juneau, Alaska. Filed in the District Court, District of Alaska, First Division. Jun. 26, 1915. J. W. Bell, Clerk. [114]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1035-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

Undertaking [on Writ of Error in Case No. 1035-B].

KNOW ALL MEN BY THESE PRESENTS that we, the above-named defendant, Thlinket Packing Company, a corporation, as principal, and B. M. Behrends as surety, are held and firmly bound unto the United States of America in the penal sum of \$400.00 (Four Hundred Dollars), for which payment well and truly made, we bind ourselves, each of our-

selves, our successors in office, our heirs, and each of our heirs, executors, administrators, and assigns firmly by these presents.

Sealed with our seals and dated this 24th day of June, 1915.

The condition of the above obligation is such that whereas the above-named defendant, Thlinket Packing Company, a corporation, has sued out a Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment of the above-entitled case by the District Court for the District of Alaska, Division Number One, rendered entered and made by the said last mentioned court on the 31st day of March, 1915, and whereby, and by the terms of which the said defendant, Thlinket Packing Company, a corporation, was fined and sentenced [115] to pay a fine of the sum of \$100.00 for the crime complained of in the indictment in this case, to wit; the crime of unlawful fishing under section 5, Act of June 26, 1906, entitled, "An Act for the Protection and Regulation of the Fisheries of Alaska."

NOW, THEREFORE, the condition of this obligation is such if the above-named Thlinket Packing Company, a corporation, shall prosecute its Writ of Error to effect, and answer all costs and damages if it shall fail to make good its plea, and shall at all times render itself amenable to the orders and process of this court or the appellate court, and render itself in execution if the judgment of this court is affirmed, on any judgment of this court, or said appellate court, or any court to which it may be appealed, or removed by Writ of Error, then this obliga-

tion shall be void: otherwise to remain in full force and virtue.

THLINKET PACKING COMPANY,
By JAS. T. BARRON,
President.
B. M. BEHREND'S.

O. K. —JNO. J. REAGAN,
Asst. U. S. Atty.

United States of America,
Territory of Alaska,—ss.

B. M. Behrends being first duly sworn on oath deposes and says: That I am the surety on the foregoing bond; am a resident of the District of Alaska, but not an attorney at law, marshal, clerk of any court, or other officer of any court, and am qualified to be bail, and am worth double the sum specified in the foregoing undertaking, exclusive of property exempt from execution and over and above all just debts and liabilities.

B. M. BEHREND'S.

Subscribed and sworn to before me this 24th day of June, A. D. 1915.

[Seal] GUY McNAUGHTON,
Notary Public for Alaska.

My commission expires Oct. 24th, 1916.

The foregoing undertaking and Surety thereon examined and approved.

Done in open court this 26th day of June,
A. D. 1915.

ROBERT W. JENNINGS,
Judge. [116]

[Endorsed]: No. 1035-B. In the District Court for the Territory of Alaska, Division No. 1. United States of America, Plaintiff, vs. Thlinket Packing Company, a corporation, Defendant. Undertaking. Winn & Burton, Attorneys for Defendant. Juneau, Alaska. Filed in the District Court, District of Alaska, First Division. Jun. 26, 1915. J. W. Bell, Clerk. [117]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1036-B.

UNITED STATES of AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corporation,
tion,

Defendant.

Undertaking [on Writ of Error in Case No. 1036-B].

KNOW ALL MEN BY THESE PRESENTS that we, the above-named defendant, Thlinket Packing Company, a corporation, as principal, and B. M. Behrends as surety, are held and firmly bound unto the United States of America in the penal sum of \$400.00 (Four Hundred Dollars), for which payment well and truly made, we bind ourselves, each of ourselves, our successors in office, our heirs and each of our heirs, executors, administrators, and assigns firmly by these presents.

Sealed with our seals and dated this 24th day of June, 1915.

The condition of the above obligation is such that whereas the above-named defendant, Thlinket Packing Company, a corporation, has sued out a Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment of the above-entitled case by the District Court for the District of Alaska, Division Number One, rendered entered and made by the said last mentioned court on the 31st day of March, 1915, and whereby, and by the terms of which the said defendant, Thlinket Packing Company, a corporation, was fined and sentenced to pay a fine of the sum of \$100.00 for the crime complained of in the indictment in this case, to wit, the crime of unlawful fishing under section 5, Act of June 26, 1906, entitled, "An Act for the Protection and Regulation of the Fisheries [118] of Alaska."

NOW, THEREFORE, the condition of this obligation is such if the above-named Thlinket Packing Company, a corporation, shall prosecute its Writ of Error to effect, and answer all costs and damages if it shall fail to make good its plea, and shall at all times render itself amenable to the orders and process of this court or the Appellate Court, and render itself in execution if the judgment of this court is affirmed, or any judgment of this court, or said Appellate Court, or any court to which it may be appealed, or removed by Writ of Error, then this

obligation shall be void; otherwise to remain in full force and virtue.

THLINKET PACKING COMPANY,

By JAS. T. BARRON,

President.

B. M. BEHREND'S.

O. K—JNO. J. REAGAN,

Asst. U. S. Atty.

United States of America,

Territory of Alaska,—ss.

B. M. Behrends, being first duly sworn, on oath deposes and says: That I am the surety on the foregoing bond; am a resident of the District of Alaska, but not an attorney at law, marshal, clerk of any court, or other officer of any court, and am qualified to be bail, and am worth double the sum specified in the foregoing undertaking, exclusive of property exempt from execution and over and above all just debts and liabilities.

B. M. BEHREND'S.

Subscribed and sworn to before me this 24th day of June, A. D. 1915.

[Seal]

GUY McNAUGHTON,

Notary Public for Alaska.

My commission expires Oct. 24th, 1916.

The foregoing Undertaking and Surety thereon examined and approved.

Done in open court this 26th day of June, A. D. 1915.

ROBERT W. JENNINGS,

Judge.

[Endorsed]: No. 1036-B. In the District Court for the Territory of Alaska, Division No. 1, United States of America, Plaintiff, vs. Thlinket Packing Company, a Corporation, Defendant. Undertaking. Winn & Burton, Attorneys for Defendant. Juneau, Alaska. Filed in the District Court, District of Alaska, First Division. Jun. 26, 1915. J. W. Bell, Clerk. [119]

*In the District Court for the District of Alaska,
Division No. One.*

Nos. 1034-B, 1035-B and 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant. [120]

Transcript of Evidence.

*In the District Court for the District of Alaska,
Division No. One*

Nos. 1034-B, 1035-B and 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

TRANSCRIPT OF EVIDENCE.

J. J. REAGAN, U. S. Attorney, and H. H. FOLSOM, Assistant U. S. Attorney, attorneys for plaintiff;

M. G. MUNLEY and WINN & BURTON, Attorneys for Defendant.

Hon. ROBERT W. JENNINGS, Judge of U. S. District Court, District of Alaska, Division No. One. [121]

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(This case came on for trial at 11:45 A. M., October 27, 1914, Messrs. J. J. Reagan and H. H. Folsom representing the Government, and Messrs. M. G.

Munley and Winn & Burton appearing for the defendant. The regular panel being exhausted, the Court ordered an open venire for eighteen jurymen, returnable at two o'clock; whereupon Court adjourned until 2 o'clock P. M., the same day, when Court reconvened pursuant to adjournment. By consent, the three indictments, Nos. 1034-B, 1035-B, and 1036-B, were consolidated for the purpose of trial. The jury was duly qualified, selected, empaneled and sworn, no exceptions having been taken during their examination. Whereupon the jury was admonished and the Court took a recess for ten minutes, after which, the Court, jury and counsel being present, opening statements were made by Mr. Reagan and Mr. Winn. Whereupon the jury was admonished and Court adjourned until 10 A. M., October 28, 1914, when Court reconvened pursuant to adjournment. The jury was called and all being present, the following proceedings were had:~) [123]

[Testimony of Ernest P. Walker, for Plaintiff.]

ERNEST P. WALKER, a witness called and sworn in behalf of the United States, testified as follows:

Direct Examination.

(By Mr. REAGAN.)

Q. Will you state your name, please?

Whereupon M. G. Munly and Winn & Burton, attorneys for the defendant, **Thlinket Packing Company**, in all three of the indictments herein against said company, being numbers 1034-B, 1035-B and

1036-B, filed and interposed the following objections,
to wit: [124]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

Nos. 1034-B, 1035-B, 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

Objections.

Come now M. G. Munly and Winn & Burton, attorneys for the Thlinket Packing Company, a corporation, in the three indictments in this court against the said Thlinket Packing Company, to wit: Indictments Nos. 1034-B, 1035-B, 1036-B, and after the empaneling of the jury and the first witness on the part of the plaintiff, the United States, being sworn to testify concerning the alleged crime set forth in each and all of the counts set out in the foregoing indictments, and object to any testimony or evidence being introduced, offered or received by this Court pertaining to any of the alleged charges in each and every indictment, and in each and every count set forth in the same upon the following grounds and for the following reasons, to wit:

1. That each several indictment and every count thereof does not charge the offense defined and set

out in the statute. That each several indictment, and every count thereof fails to charge that defendant did unlawfully fish for, take or kill salmon of any species.

2. That each several indictment and every count thereof does not allege that defendant failed to close the gate, mouth or tunnel, or raise or lower web of heart next to the pot in a trap designed and used by defendant to fish for, take or kill salmon of any species.

3. That each several indictment and every count [125] thereof does not set forth the facts constituting the alleged offense in such manner as to apprise the defendant of the nature of the charge which he is called upon to defend.

4. That each several indictment and every count thereof fails to allege that said alleged fishing was done during the weekly close season.

5. That each several indictment, and every count thereof does not allege or set out any particulars or facts as to the closing of the tunnels, or the facts with regard to the raising or lowering of the webbing of the heart next to the pot in such manner as to permit the free passage of salmon and other fishes, in such a way as to embrace every element of the offense defined by the statute.

6. That each several indictment and every count thereof fails to allege that the locality where such fishing was done was not in the districts or places excepted from the statute, viz.: that it was not in Cook's Inlet, the Delta of the Copper River, Bering

(Testimony of Ernest P. Walker.)

Sea, or waters tributary thereto; or that it was not with one of the excepted forms of gear, viz.: rod, spear or gaff.

7. That each several indictment, and every count thereof fails to charge the offense denounced by the statute in such manner as to enable a person of common understanding to know what is intended, and the offense is not alleged with such a degree of certainty as to enable the Court to pronounce judgment in case of conviction according to the right of the case.

W. G. MUNLY and
WINN & WINN,

Attorneys for Defendant. [126]

The COURT.—Objection overruled.

Mr. WINN.—We will take an exception.

The COURT.—Exception allowed.

A. Ernest P. Walker.

Q. (By Mr. REAGAN.) What position, if any, do you hold at the present time?

A. I am at present Warden, United States Bureau of Fisheries, Alaska Service.

Q. Do you know the defendant company's fish-traps Numbers 1, 2, 3, 3-A, 4, 5, 6, 9, 11, and 12?

A. I do.

Q. Now, Mr. Walker, will you look at this contrivance on this [*127—1†] table and state whether you have seen that before? A. I have.

*Page-number appearing at foot of page of certified Original Transcript of Record.

†Original page-number appearing at foot of page of Testimony as same appears in Original Certified Transcript of Record.

(Testimony of Ernest P. Walker.)

Q. What is it, do you know?

Mr. WINN.—We object to that—there has been no foundation laid, the witness has not qualified himself to testify; it is incompetent, irrelevant, and immaterial on the charges made in each and all of the indictments and each and all of the counts in the indictments.

The COURT.—Objection overruled.

A. It is a model of a fish-trap essentially representing the important parts of the heart wall next to the pot and the tunnel.

Mr. WINN.—I move to strike out the answer because it isn't in answer to the question and the witness has gone ahead without qualifying and stated what this structure is.

The COURT.—The motion will be denied.

Q. (By Mr. REAGAN.) Mr. Walker, will you state whether or not the traps of this defendant company of which I have interrogated you previously, can be illustrated with this device—all of the device?

Mr. WINN.—Same objection—no foundation laid; it hasn't been shown that he ever saw a fish-trap.

The COURT.—Same ruling.

A. Yes.

Q. (By Mr. REAGAN.) And especially with reference to the tunnel and heart walls next to the pot in the traps of this defendant company?

Mr. WINN.—Same objection.

The COURT.—Same ruling.

A. Yes. [128—2]

(Testimony of Ernest P. Walker.)

Mr. REAGAN.—For the purpose of illustration, I offer this model in evidence.

Mr. WINN.—Same objection—no foundation. It has not been shown who made it, how it was made, when it was made, or that this witness has ever seen a fish-trap.

The COURT.—What do you offer it as—illustrating what?

Mr. REAGAN.—So that I can illustrate the testimony. I want the jury to know where the heart is—

The COURT.—Ask the witness if that model represents the general construction of a fish-trap—if it shows the spiller, the lead and tunnel. If he testifies to it in that way, it may be admitted for the purpose of illustrating his testimony.

Q. (By Mr. REAGAN.) Will you state what the fact is as to whether or not this model shows the lead—correctly illustrates the lead of a fish-trap such as is used by this defendant company?

Mr. WINN.—Same objection.

The COURT.—Same ruling.

A. It does.

Q. (By Mr. REAGAN.) Does it represent the position of the heart of the traps which are used by this defendant company? A. Yes.

Mr. WINN.—Same objection.

The COURT.—Same ruling, with this understanding: You say, “As used by the defendant company.” That isn’t the question—“As used by traps that are in these indictments.”

(Testimony of Ernest P. Walker.)

Q. (By Mr. REAGAN.) Will you state whether or not it represents the tunnel used in the traps referred to in these indictments? A. Yes.

Mr. WINN.—Same objection.

The COURT.—Same ruling. [129—3]

Q. (By Mr. REAGAN.) Will you state whether or not it correctly represents the pot used in the traps referred to in these indictments?

Mr. WINN.—Same objection.

The COURT.—Objection overruled.

A. Yes.

Q. (By Mr. REAGAN.) Will you state whether or not it substantially represents the spiller referred to in these indictments? A. Yes.

Mr. WINN.—To save time, I wish the same objection urged to every question of this character.

The COURT.—Very well—the record will show that.

Mr. REAGAN.—I ask that this be used for illustrating the testimony of the witness.

Mr. WINN.—We object on the ground that it is incompetent, irrelevant, and immaterial for any purposes of the case or under any of the charges in the indictments, and that the witness has not qualified himself to testify concerning the construction of a fish-trap, or has seen one, or ever constructed one, and hasn't qualified to testify to a matter that is somewhat expert business—the construction of a fish-trap. It can only be done by expert people.

The COURT.—Objection overruled.

(Testimony of Ernest P. Walker.)

Q. (By Mr. REAGAN.) I am going to take up indictment No. 1034-B. Mr. Walker, you say you are Fish Warden, Bureau of Fisheries of the United States. Will you state whether or not, as part of your duties, you patrolled the traps of these waters?

A. I have.

Q. Will you state what the fact is as to whether or not you made any patrol of the traps of the defendant company, Nos. 1, 2, 3, 4, 5, and 6, during the weekly closed season beginning [130-4] at six o'clock post-meridian Saturday, July 11, 1914, and ending at six o'clock ante-meridian, Monday, July 13, 1914?

Mr. WINN.—We object to the question for the reason that there is no such allegation in the indictment, and we deem that one of the material allegations of the indictment and, further, that the witness is not qualified to testify concerning what he might have seen in patrolling the traps.

The COURT.—The first part of your objection, that there isn't anything in the indictment—doesn't it charge that?

Mr. WINN.—It charges on that date but not according to statute.

The COURT.—You make just the general objection?

Mr. WINN.—Yes.

The COURT.—Objection overruled.

A. I did.

Q. (By Mr. REAGAN.) You reached trap No. 1 of the defendant company. Will you state what

(Testimony of Ernest P. Walker.)

the condition of the webbing of the heart of trap No. 1, on each side next to the pot of said trap, was at that time with reference to whether it was open or closed?

Mr. WINN.—I will make one objection to cover this. We object to the question because the witness has not qualified to testify concerning the construction of a trap—of the tunnel or any part of a fish-trap; furthermore, it is incompetent, irrelevant, and immaterial under the charges made in the respective counts in the three indictments which have been consolidated in this case. If it will be understood that that applies to any testimony he gives, I will not have to take up the time of the Court during each question propounded. [131—5]

The COURT.—The objection is overruled, but, Mr. Reagan, this witness has not testified yet to this jury what the heart of the trap is or what the pot of a trap is. Now, you ask him the general question about the webbing of the heart. You should—

Mr. REAGAN.—My intention was to ask him and then illustrate it with this device.

Mr. WINN.—Your Honor understands that this objection goes to each question regarding the illustration of this alleged trap?

The COURT.—Yes, all through.

A. It was not open back as required, twenty-five feet.

Q. (By Mr. REAGAN.) You say it was not opened the required twenty-five feet?

(Testimony of Ernest P. Walker.)

A. It was not.

Q. Will you show the jury by using this device where the heart walls of a trap are located? Just show where they are located.

A. These are the heart walls—walls of the heart. (Indicating.)

Q. Will you show the jurors where the twenty-five feet of the heart walls are next to the pot?

A. Twenty-five feet of the heart walls next to the pot are the heart walls from twenty-five feet—from here back on either side.

Q. Those walls—Are those the walls you alluded to in your answer? A. Those are.

Q. While you are there, will you explain the position of the tunnel?

A. In the normal fishing condition?

Q. No; just point it out to them so they can see with their eyes.

A. The tunnel is represented by this webbing here, leading from the heart into the pot. (Indicating.) [132—6]

Q. Is it, or is it not, located within the pot itself, or within the heart walls? A. Yes.

Q. As to trap No. 2, will you state what the fact is as to whether or not twenty-five feet of the webbing or netting of the heart of that trap was or was not lifted or lowered in such manner as required by the Act?

Mr. WINN.—I object to the question on the same ground. It requires the witness to construe the Act.

(Testimony of Ernest P. Walker.)

Mr. REAGAN.—I will withdraw it and ask him if it was lifted or lowered for twenty-five feet next to the pot?

Mr. WINN.—Same objection.

The COURT.—Same ruling.

A. It was not.

Q. (By Mr. REAGAN.) Now, will you state whether or not the webbing next to the pot in the heart of that trap was open for twenty-five feet back from the pot? A. It was not.

Q. Now, as to trap No. 3. Will you state what the condition of the heart walls of that trap for a space of twenty-five feet on each side next to the pot was during that closed season?

Mr. WINN.—Same objection—to this trap. It will be understood that I am raising the same objection to these different traps—to all questions propounded concerning the same.

The COURT.—Same ruling.

A. It was not raised or lowered, or otherwise removed for that distance.

Q. (By Mr. REAGAN.) As to trap No. 4, on the occasion of your visit to that trap during that closed season; what was the condition of the twenty-five feet of webbing of the heart on each side next to the pot thereof? [133—7]

A. It was not raised or lowered or otherwise opened back for twenty-five feet.

Q. Will you state what was the condition of the tunnel—whether or not the tunnel of that trap was

(Testimony of Ernest P. Walker.)

opened or closed at the time you visited it during that closed season?

A. It was not completely closed.

Q. As to trap No. 5 at the time you visited that trap during that closed season, what was the condition of twenty-five feet of the webbing or net of the heart of that trap on each side next to the pot thereof?

A. It was not raised or lowered or otherwise opened for twenty-five feet.

Q. What was the condition of the tunnel of that trap on the occasion of that visit during that closed season? A. It was not completely closed.

Q. As to trap No. 6—

Mr. WINN.—You understand that the same objection goes to each and every trap and each and every count?

The COURT.—Yes.

Q. (By Mr. REAGAN.) As to trap No. 6, will you state what was the condition of the tunnel of that trap on the occasion of that visit during that closed season?

A. It was not completely closed.

Q. Will you state what was the condition of twenty-five feet of the webbing or net of the heart on each side of the pot thereof during that closed season?

A. It was not raised or lowered or otherwise opened for twenty-five feet.

Q. Now, Mr. Walker, I will ask you whether or

(Testimony of Ernest P. Walker.)

not the heart of each of those traps on the occasion of your visit during that closed season were in such condition as to permit the free [134—8] passage of salmon and other fishes?

Mr. WINN.—Same objection.

The COURT.—I think the objection to that question will be sustained, unless you qualify the witness as to what it takes to permit the free passage of fish. That calls for a conclusion.

Mr. REAGAN.—I will withdraw that question.

Q. Was the webbing of the heart walls on each of those traps opened and, if so, to what extent above the water-line at the time you visited them?

Mr. WINN.—Same objection—to these general questions.

The COURT.—Same ruling.

A. An attempt or pretense had been made of opening each one. I would have to refer to my notes made at the time to give you the exact distance.

Q. (By Mr. REAGAN.) Are they notes you made at the time?

A. Yes, sir, they are notes I made at the time of passing each trap.

Q. Beginning with trap No. 1, if you can, or if you have them in the reverse order, take them that way.

Mr. WINN.—Same general objection about the qualification of the witness—the same general objection.

The COURT.—Same ruling.

Q. (By Mr. REAGAN.) Did you state that you

(Testimony of Ernest P. Walker.)

made those notes yourself at the time? A. Yes.

Q. This is series 1, 2, 3, 4, 5 and 6 of July 11th.

A. Yes. I can take them up by the series of 1, 2, 3, 4, 5 and 6 by running backwards on my notes.

Q. All right.

A. On No. 1, which was visited at 9:49 A. M., morning of the 12th, [135—9] the heart wall was open back approximately four feet—that is, both heart walls.

Q. And for the remaining distance of twenty-one feet how was the heart wall?

A. The webbing was in position for fishing.

Q. Now, go to the next trap, please, No. 2.

A. That was visited at 9:44 A. M. The heart walls were open back about four feet at the water level.

Q. And the other twenty-one feet of that webbing, which would make twenty-five feet—what was the condition of that?

A. That was in perfect fishing condition.

Mr. WINN.—We object. I move to strike out the answer; he hasn't qualified or stated that he knew anything about fish-trap fishing.

The COURT.—Objection overruled and motion denied.

Q. (By Mr. REAGAN.) As to trap No. 3?

A. That was visited at 9:15 A. M. One heart wall was about two feet, the other was about eighteen inches.

Q. As to the heart wall that was opened two feet, what was the condition of the webbing for the remaining twenty-three feet of the twenty-five?

(Testimony of Ernest P. Walker.)

A. That was in the normal—

Mr. WINN.—I object to the question on the ground that it is incompetent, irrelevant, and immaterial, and he hasn't qualified to answer the question.

The COURT.—Mr. Reagan, it seems to me that the question in dispute in this case is whether or not the web was down twenty-five feet.

Mr. REAGAN.—That is what I consider myself.

The COURT.—Why don't you confine your testimony to the things that are in dispute. Objection overruled. [136—10]

Q. (By Mr. REAGAN.) What was the condition of the remaining twenty-three feet?

A. They were in the normal position.

The COURT.—Q. Were they up or were they down the twenty-one feet?

A. The remaining twenty-three feet were up.

Q. Not lowered or not raised?

A. Not lowered or not raised.

Q. (By Mr. REAGAN.) As to trap No. 4, how much of an opening, if any, was there at the junction of the heart walls and pot?

A. I do not have the exact distance, but it was less than twenty-five feet.

Q. As to trap No. 5, how much of an opening was there at the junction of the heart walls and the pot?

A. My notes here read, Tunnel—

Mr. WINN.—I object to what his notes say.

The COURT.—Q. Can you testify without your notes?

A. This will refresh my memory.

(Testimony of Ernest P. Walker.)

Q. Can you testify without looking at the notes?

A. I can't give exact distances.

Q. Can you give it by not looking at the notes?

A. Yes; that is, I can within a foot or two, but not exactly.

The COURT.—Very well, look at your notes.

A. The heart walls there did not exceed four feet.

Q. (By Mr. REAGAN.) As to the next trap?

A. That is, No. 6?

Q. No. 6.

A. One heart wall was opened one foot and the other about three feet.

Q. Was the remaining part of the webbing of the heart—remaining portion of the distance of twenty-five feet raised or lowered or otherwise opened? [137—11] A. It was not.

Q. Now, we will take the next indictment, which is numbered 1035—B. Will you state whether or not during the weekly closed season beginning at 6 o'clock post-meridian, August 8th, which was Saturday, and ending Monday morning, August 10, 1914, at 6 o'clock ante-meridian you visited traps Nos. 11 and 12 of the Thlinket Packing Company, the defendant here? A. I did.

Mr. WINN.—Same objection to the question—incompetent, irrelevant and immaterial, not justified by the allegations in the indictment.

The COURT.—Objection overruled.

Q. (By Mr. REAGAN.) Now, in trap No. 11, will you state what the condition of the heart wall was next to the post on each side of the heart for a

(Testimony of Ernest P. Walker.)

distance of twenty-five feet back during your visit there during that closed season?

A. It was not raised or lowered for a distance of twenty-five feet.

Q. Did you take a photograph of that trap?

A. I took a photograph of that trap the morning, Monday morning following—that is, the morning of the 11th.

Q. At what hour? A. That was after six A. M.

Q. Had the trap—what was the fact as to whether or not the trap had been changed in its condition from the time you saw it the day before?

Mr. WINN.—We object to the question as incompetent, irrelevant and immaterial and he has got to confine it to a certain time. He is going beyond the time stated in the indictment and he says some time after six o'clock.

The COURT.—This question is “if he knows whether [138—12] or not the condition of the trap has been changed between the time he took the photograph and the time he says he examined it.” He may answer the question “yes or no.”

A. It had been partially changed.

Q. (By Mr. REAGAN.) In what respect had there been any change?

Mr. WINN.—We object to that as incompetent, irrelevant and immaterial. It was after the closed season partially changed.

The COURT.—If he knows in what particular it had been changed and that particular is not important to the question in dispute, the testimony is com-

(Testimony of Ernest P. Walker.)

petent to identify the condition of things at the time.
Objection overruled.

A. The tunnel had been drawn out into the pot; that is, it had been changed to what it was on Sunday.

Q. (By Mr. REAGAN.) Were the heart walls changed?

A. The heart walls had not been changed.

Q. Do the photographs show the heart walls?

A. They do.

Q. Have you that photograph with you?

A. I have. I took a series of photographs with two different cameras.

Q. Is this a photograph you took at the time of the conditions then represented of the heart wall?

A. It is one of the photographs which I took.

Mr. REAGAN.—If the Court please, I offer this photograph in evidence.

Mr. WINN.—We object on the ground that it is incompetent, irrelevant and immaterial under the allegations in the count and, further, that the time of taking the photograph has not been designated by the witness except to the extent that it was taken beyond the closed period in that particular count. [139—13]

The COURT.—The objection will be overruled.

(Admitted in evidence and marked Plaintiff's Exhibit "A.")

Q. (By Mr. REAGAN.) Will you show to the jury the opening in the heart walls on that photograph?

Mr. WINN.—If he is going to do it, I wish he

(Testimony of Ernest P. Walker.)

would do it so it will go into the record.

The COURT.—Very well, mark the opening with an X, and show it to the jury.

Mr. WINN.—Same objection.

A. The opening indicated by the mark X at about the water level indicates the opening in the heart walls. (Showing photograph to jury.)

Q. (By Mr. REAGAN.) Now, as to trap No. 12 on the occasion of your visit during that closed season, what was the condition of twenty-five feet of the webbing or net of the heart on each side next to the pot?

Mr. WINN.—Same objection.

The COURT.—Same ruling.

A. It was not raised or lowered for twenty-five feet.

Q. (By Mr. REAGAN.) Will you state whether or not you saw that trap fishing at that time?

A. I did.

Mr. WINN.—I object to the question as incompetent, irrelevant and immaterial under the allegations of the count, or any counts in any of the indictments, and therefore it is not permissible. It is not charged.

The COURT.—Let us see: You object to it as irrelevant, incompetent and immaterial whether the trap was fishing or not?

Mr. WINN.—No, sir, under the allegations in the count, because there is no allegation in the count, so there is no necessity to prove it. [140—14]

The COURT.—The view the Court takes of this

(Testimony of Ernest P. Walker.)

matter is that it doesn't make a particle of difference. Your objection is sustained.

Q. (Mr. REAGAN.) I shall take the next indictment, No. 1036-B. On that same trip during that same closed season, did you visit trap No. 1?

A. I did.

Q. What was the condition of twenty-five feet of the webbing or net of the heart of that trap on each side thereof next to the pot on that occasion during that closed season?

A. It was not open or raised for twenty-five feet.

Q. Or was it otherwise opened? A. No, sir.

Q. What was the condition of the tunnel of that trap on that occasion? A. May I use these notes?

Mr. WINN.—I want to know whether the notes were taken at the time.

The COURT.—If you cannot remember without the notes, refer to them. Did you take these notes at the time? A. Yes.

Q. And you can't testify without looking at the notes with any definiteness?

A. I couldn't be absolutely certain.

The COURT.—Very well, you may testify if you can without them, and if you need them to refresh your memory, you may do so.

Q. (By Mr. REAGAN.) What was the condition of the tunnel during that closed season?

A. There was at least one foot remaining open. [141—15]

Q. Now, as to trap No. 2 on the occasion of your visit to that trap during that closed season, what

(Testimony of Ernest P. Walker.)

was the condition of the webbing or net of the heart for twenty-five feet next to the pot?

A. It was not raised or lowered for twenty-five feet.

Q. Was it otherwise opened for twenty-five feet?

A. It was not.

Q. What was the condition of the tunnel on that trip—on that occasion?

A. It was open approximately eighteen inches.

Q. Now, as to trap No. 3, on the occasion of your visit on that day during that closed season, what was the condition of twenty-five feet of the webbing or net of the heart next to the pot?

A. It was not opened for twenty-five feet—not raised or lowered for twenty-five feet.

Q. Or otherwise opened? A. No.

Q. What was the condition of the tunnel on that trap on that day?

A. There was a slight opening remaining on that.

Q. Now, as to trap No. 4 of this defendant company on the occasion of that visit, from August 8th to August 10th, what was the condition of the webbing or net of the heart of that trap on each side of the pot thereof?

A. It was not raised or lowered for twenty-five feet.

Q. Or was it opened or otherwise?

A. No, not for twenty-five feet.

Q. And what was the condition of the tunnel of that trap on that occasion?

A. It was merely slacked away—that is, not pulled

(Testimony of Ernest P. Walker.)

to one side. Q. Was it closed? [142—16]

A. Not completely.

Q. As to trap No. 5 during that closed season on the occasion of your visit to that trap, what was the condition of twenty-five feet of the webbing or net of the heart on each side of the pot thereof?

A. Number five, you say?

Q. Number four. I said number four—I meant 3-A; A. 3-A?

Q. You have answered as to No. 4; now, I am asking you as to 3-A.

A. 3-A, the heart walls were not raised or lowered or otherwise opened for twenty-five feet.

Q. Next to the pot? A. Yes.

Q. What was the condition of the tunnel of 3-A on that occasion? A. Open about one foot.

Q. Now, as to trap No. 6 on that occasion—on the occasion of that visit—what was the condition of the twenty-five feet of webbing or not of the heart of that trap?

A. It was not raised or lowered or otherwise opened for a distance of twenty-five feet next to the pot.

Q. What was the condition of the tunnel of that trap on that visit, on that occasion?

A. There was opened from eighteen inches to two feet.

Q. Now, as to trap No. 1, what was the condition of the twenty-five feet of the webbing or net of the heart of that trap next to the pot on the occasion of that visit during that closed season?

(Testimony of Ernest P. Walker.)

A. It was not opened for a distance of twenty-five feet—it was neither raised or lowered or otherwise opened.

Q. What was the condition of the tunnel of that trap on the occasion of that visit? [143—17]

A. It was, so far as could be seen, open below the water level; that is, pulled into the pot.

Mr. REAGAN.—That is all.

(Whereupon the jury was admonished and the Court took a recess for five minutes, after which, the Court, jury, and counsel being present, the witness was cross-examined as follows:)

Cross-examination.

(By Mr. WINN.)

Q. How long have you been occupying this position, Mr. Walker? A. Since a year ago last July.

Q. Were you up here last year?

A. I was up here from the last few days of July.

Q. Were you occupying that position or was there some one else occupying this position at that time?

A. I don't understand the question.

Q. Were you occupying this same position at that time that you are now?

A. I was Deputy Warden up until, I believe it was the last few days of September this year, then, owing to a change in the Civil Sundry Bill, it evidently meant a change in titles —no change.

Q. Duties are the same?

A. Duties are the same.

Q. Bowers was up here this last summer?

A. He was up here.

(Testimony of Ernest P. Walker.)

Q. He had your position; were his duties the same?

A. His duties were the same; he was the superior officer.

Q. Superior officer over you? A. Yes, sir.

Q. Who is your superior now? [144—18]

A. For this past summer I have been in immediate charge of the Southeastern Alaska patrol work. Mr. Bower has charge of the Pacific Coast office at Seattle.

Q. When you say that, over what territory or what waters do your duties extend?

A. Our territory has never been definitely defined. I have been as far west as Prince William Sound.

Q. Do you go out as far as Sitka?

A. I haven't been this summer, but our work covers out as far as Yakutat.

Q. Where did you come from to Alaska?

A. I came directly from Colorado.

Q. What did you do there?

A. I had only been in Colorado a short time that particular time. I had been doing some zoological collecting there.

Q. Collecting? A. Zoological collecting.

Q. How long did you say you lived in Colorado prior to coming here?

A. My home had been in Colorado for about—almost four years.

Q. Where were you for three or four years prior to that time? A. Indiana.

Q. Have you ever lived in Wyoming?

(Testimony of Ernest P. Walker.)

A. I have been in Wyoming. I have spent a great portion of two years there, but my home at that time was Colorado.

Q. You never lived on salt water until you came to Alaska? A. No.

Q. Never had any experience with gill-nets or any appliances for catching fish prior to coming to Alaska? A. No.

Q. Had you ever seen a salmon before coming to Alaska? A. Yes, sir. [145—19]

Q. Ever see them in the water before coming to Alaska?

Mr. REAGAN.—I object to the question as irrelevant, incompetent and not cross-examination.

Mr. WINN.—It is for qualifications—

The COURT.—Qualifications for what?

Mr. WINN.—He testified to the construction of a fish-trap.

The COURT.—He didn't testify to the construction of a salmon.

Mr. WINN.—No, but I want to show what experience he has had in this line of business he is in now.

The COURT.—You can test him as to that without asking him whether he saw a salmon or not. Objection sustained.

Q. (By Mr. WINN.) When did you first see a fish-trap? A. When I arrived in Alaska.

Q. While Mr. Bower was here? A. Yes.

Q. Did you take a run around with Bower?

(Testimony of Ernest P. Walker.)

A. Yes, sir.

Q. These fish-traps of the Thlinket Packing Company were operated, fished, while Bower was here as they are now?

Mr. REAGAN.—I object to the question because he hasn't shown that he was here at the time Bower was here.

The COURT.—He may answer whether he knows.

A. I don't know whether these exact traps were or not.

Q. (By Mr. WINN.) Did you see any of these traps while Bower was here?

A. I saw fish-traps; I don't remember the numbers of them.

Q. Do you remember which fish-traps you saw?

A. I saw P. A. F. and probably T. P.; I don't know the different numbers. [146—20]

Q. If you were out with Bower you were inspecting how they were operated? A. Yes, sir.

Q. Don't you know that these Barron traps (I call them Barron traps for short; I mean the defendant's traps)—Don't you know that they were operated and fished that same season while Bower was here as they are now?

Mr. REAGAN.—I object unless he knows.

A. I don't know how many they had.

Q. (By Mr. WINN.) I ask you if they didn't fish the traps the same way while Bower was here that they are fished now?

Mr. REAGAN.—I object to it as irrelevant, in-

(Testimony of Ernest P. Walker.)

competent and immaterial.

A. I don't know that they did fish exactly the same way. I remember they were somewhat the same—I don't know that they were exactly.

Q. And the pull-back pole that opens in the heart pulled back just the same as it does on this, the same as you referred to here, did it not?

Mr. REAGAN.—If you know.

Mr. WINN.—I would rather the witness answer without being cautioned by counsel.

Mr. REAGAN.—Then I can object to the question.

Mr. WINN.—He was in the business.

Mr. REAGAN.—He just came here and he is asking this question and I want to protect the witness about saying something inadvertently about something he does not know.

The COURT.—If the witness knows, he may answer the question.

A. I did not know how they fished them before I came up here.

Q. (By Mr. WINN.) I am not asking about before you came up here— [147—21] I don't suppose you did, you were in Colorado—but I am asking you after you came here while Bower was here.

A. The traps I saw fishing while I was with Bower were operated in the same general way. I don't remember exact distances on those a year ago.

Q. In a general way you mean that the part of the heart you pointed to with that pull-back, or closing

(Testimony of Ernest P. Walker.)

stick, operated in the same way? I am speaking, of course, of the defendant company's traps.

A. I said I did not remember the different—whose traps were operated.

Q. Don't you remember whether you saw any one of these several traps?

A. I don't remember the marks on the traps—I saw traps. I said I saw traps operated in the same general way.

Q. I mean traps of this defendant company.

A. I said I don't remember the marks on the traps.

Q. Don't you know the location of them?

A. Traps are sometimes moved slightly.

Q. Were these removed?

A. I don't remember.

Q. How?

A. I don't know about that.

Q. You couldn't remember, then, from seeing the traps, where they were constructed and whether or not they were placed where you couldn't tell whether they were in the same place this year or not?

A. I am inclined to think some of them were, but I don't know positively.

Q. Then you know you saw some of the Thlinket Packing Company's traps, don't you? [148—22]

Mr. REAGAN.—I object to that. He says he couldn't tell what company's traps he saw, that they were marked, and he doesn't remember the marking.

The COURT.—If he answers it once, he can answer it twice.

(Testimony of Ernest P. Walker.)

A. I said I did not remember the marks on the traps. I don't know whether they were T. P. or what they were.

Q. (By Mr. WINN.) I ask you if you cannot tell the Court and jury as to whether or not some of these traps you have testified to on direct examination are some of the same traps you saw last year. Leave out the marks business.

A. I don't know whether they were the same traps I saw last year or not.

Q. You mean you couldn't go out to any pile of traps last year and look them over irrespective of any marks on them and go back and tell whether those traps were approximately in the same position as last year?

A. I remember that traps which are now Thlinket Packing Company traps are similarly placed to what some traps were last year. I don't remember, though, who owned them.

Q. Who made the examination last year; did you make them or was Bower making the examination?

A. Bower made all the trips but one.

Q. Then you went with him?

A. I was with him one trip and another trip I made myself.

Q. And you were with him when he visited some of these traps of the Thlinket Packing Company?

A. Yes, I suppose they were Thlinket Packing Company if they operated traps there. I haven't said that I knew they operated any.

(Testimony of Ernest P. Walker.)

Mr. REAGAN.—I object to this testimony on the [149—23] further ground that it is not cross-examination. I asked him nothing about last year whatever and it is immaterial anyway. We are making no contention as to what they did last year, whether or not they violated the law last year. The question is what they did at the time these indictments were made or at the time the indictments charged. What they did before has nothing to do with it.

The COURT.—On what theory is it cross-examination?

Mr. WINN.—I am through—I haven't any further questions except on some other things.

Q. The first experience you ever had, or the first time you ever saw a fish-trap, was when you went out with Bower, who was your superior, some time in July or August of last year?

A. I had seen a trap a few days before I went out with Bower.

Q. When was the first one or where was it, do you remember?

A. I saw some trap—it was about the first day of August.

Q. What have you been doing all this summer?

A. What have I been doing?

Q. Yes, what have you been doing?

A. Commencing what date?

Q. Since you came here.

A. I have been in Alaska since the time—I

(Testimony of Ernest P. Walker.)

haven't been out of Alaska except simply on the high seas once or twice.

Q. In Southeastern Alaska?

A. I got out as far as the west side of Prince William Sound once. I was out of Southeastern Alaska about three weeks; that was the longest time.

Q. Generally, how much of the waters of Southeastern Alaska did you cover; did you visit traps about Ketchikan and Wrangell? A. Yes, sir.

Q. And the Buschmann traps and the Pacific American Fisheries [150—24] Company's traps and the company that operates near Hoonah, and the traps of George Myers,—did you visit over all that territory?

A. I have been on only one Sunday trap patrol on the lower district—two rather—I saw the Pillar Bay trap one Sunday, and then on Sunday, July 5th, I saw four or five traps; that was at the beginning of the season. That was on the Wrangell run.

Q. About how many traps in addition to the Thlinket Packing Company traps did you see during the season?

A. How many did I see this season in addition?

Q. Yes.

Mr. REAGAN.—I object to it as immaterial.

The COURT.—Objection overruled.

A. My notes could give you exactly.

Q. (By Mr. WINN.) Well, approximately, without the notes—I don't care to go into detail on it.

A. I would say maybe fifty, might be ten more or ten less.

(Testimony of Ernest P. Walker.)

Q. In addition to these traps of the defendant company in this case, did you visit any of the Northwestern Fisheries Company's traps? A. I did.

Q. Now, Mr. Walker, commencing with indictment No. 1034-B, I want to ask you a few questions concerning the counts contained in that. The first count contained in that is T. P. Co.'s No. 1, and the date that you have here is July 12th. What time did you say you were at that trap on that day?

A. I didn't give you just the time—I can give it. You say on the 12th?

Q. Yes. A. That is, T. P. No. 1.

Q. Yes. A. 9:49 A. M. [151—25]

Q. And what were your measurements there?

A. Approximately four feet.

Q. You approximate it—did you measure it?

A. Not with a tape-line, no.

Q. How did you approximate it?

A. Judging by the distance between the piling.

Q. You didn't get off the boat and take any measurements?

A. I don't remember that I landed on that trap.

Q. Now, do you know how long those pull-back sticks are on No. 1?

A. I didn't measure it.

Q. You don't know how long it is. What would you say about that—you are pretty good on estimating—what was that?

A. I would say approximately twenty-four feet—might be five feet more or five feet less, because if

(Testimony of Ernest P. Walker.)

you measure below the lashing—do you mean below the short shove-down?

Q. Yes, the long shove-down runs from the top of the trap down to the bottom of the ocean, doesn't it?

A. Supposed to.

Q. I mean the pull-back or closing stick; you don't know only by guess how long that was?

A. I have measured from the top of the capping to the lashing on some of them.

Q. On this particular one?

A. It will not exceed thirty feet.

Q. That is your judgment?

A. You are asking me for my judgment.

Q. I say you didn't measure it?

A. Not actual measurement, no.

Q. What about the other side of the trap—the heart? A. Practically the same.

Q. Pull-back stick about thirty feet long?

A. I said not to exceed thirty feet. [152—26]

Q. How wide open was that at the widest part on the other side of the heart?

A. I didn't say how wide it was. At the water level it was about four feet.

Q. How wide was it at the widest part?

A. I would judge it to be about ten to twelve.

Q. That is your judgment?

A. I didn't measure it right at the level of the capping; that is, above high tide.

Q. Now, then, at the water level how was it?

A. I said about four feet wide.

Q. That was at 9:45 in the morning? A. Yes.

(Testimony of Ernest P. Walker.)

Q. When did you reach the next trap?

A. Number two followed, or no, trap—T. P. No. 2 was reached before. You see, they are arranged in the reverse order.

Q. I see. What time did you reach that trap No. 2 in this indictment No. 1034? That is what I am asking about. When were you there?

A. That is, on July 12th?

Q. Yes, on the 12th. A. That was 9:44 A. M.

Q. How far are those traps apart?

A. They were a little over 1800 feet. They are about five minutes run almost straight through.

Q. You reached that about 9:44 and then you went, you say, down to trap No. 1 and got there about 9:49? A. Yes.

Q. Now, did this trap No. 2 have the same sort of closing or pull-back stick? A. It did. [153—27]

Q. Same kind? A. Yes.

Q. Your judgment is, about the same length?

A. Yes, approximately so.

Q. How wide did you say that it was open at the water's edge and pull-back? A. About eight feet.

Q. The opening is in somewhat of a V-shape?

A. Yes, running from eight feet at the water's level; it is nothing at the lashing, which was about twenty-four feet below the capping, or approximately that.

Q. What was it on the other side, approximately?

A. Approximately the same.

Q. The same sort of a pull-back? A. Yes.

Q. Now, what was the next trap you went to, No.

(Testimony of Ernest P. Walker.)

3, or did that come in a different order?

A. You are taking them from one to three in the indictment?

Q. Yes, I will take count three in this indictment. That is the way they were testified to by you on direct examination and I want to take them in the same order.

A. That was visited at 9:15 A. M.

Q. 10:15 A. M.? A. 9:15.

Q. You reached that before you did trap No. 2?

A. Yes.

Q. And that had the same sort of a closing or pull-back stick?

A. Yes, approximately the same.

Q. Approximately the same kind. Did you notice how wide it was at the water's edge on both sides?

A. One of them was about eighteen inches and the other about two feet. [154—28]

Q. Was anything wrong with the pot of that?

A. With the pot of that trap?

Q. Not the pot—the tunnel entering the pot. No, I will withdraw that question. You haven't testified anything in there about the tunnel that leads into the pot. Now, when were you at T. P. Co. No. 4? A. That was 9 A. M.

Q. Now, what did you find there at the water level?

A. It was not open back the required twenty-five feet.

Q. I said how was it at the water's edge?

A. I don't have the exact distance.

(Testimony of Ernest P. Walker.)

Q. How about the pull-back stick?

A. The same generally.

Q. As to the other traps—did you get off at any of these traps and make measurements?

A. Not on this.

Q. Not on this list you have just testified about?

A. No, not those I have just testified about.

Q. And your distances are estimates?

A. They are close estimates.

Q. Now, on T. P. Co. No. 5; what time were you there? A. 8:45 A. M.

Q. That had the same sort of pull-back sticks or closing poles? A. Yes, approximately the same.

Q. How wide did you find them open at the bottom in the heart?

A. Not to exceed five feet—probably much less.

Q. That was another estimate you made, was it? You didn't get out and measure it?

A. No, I didn't measure it.

Q. Now, the next one is in count 6—T. P. Co. No. 6—what time were you there?

A. That was about 7:45 A. M. [155—29]

Q. The same sort of pull-back closing sticks as the other traps? A. Yes.

Q. You made your estimates there—you didn't make any measurements?

A. Not any actual measurements—between one and three feet; that is, one was about one foot and the other three feet.

Q. At the water's edge? A. Yes.

Q. Both of those you estimated?

(Testimony of Ernest P. Walker.)

A. Yes, close estimates.

Q. Now, let us take the other one, 1035-B; contains two counts; when did you reach that trap—T. P. Co. No. 11? A. 9:20 P. M.

Q. You found the same sort of pull-back sticks or closing sticks in the heart?

A. Yes, approximately the same.

Q. What did you find at the water level on either or both sides of the heart in that case?

A. Only a comparatively slight opening; that is, not to exceed ten feet.

Q. You estimated that, did you?

A. Yes—that is, estimates—I measured by the eye, judging the distance between the piles.

Q. Of course, you couldn't estimate it any other way than by the eye?

A. No, judging by the distance between the piles.

Q. Did you measure any distances between the piles? A. I have.

Q. In all of these traps?

A. I have measured it on No. 11.

Q. Did you measure it on any of the rest of them?

A. I have measured it on traps of another company. [156—30]

Q. I don't care about another company.

A. No other trap of this company.

Q. On trap No. 11 you actually measured?

A. Yes, I measured.

Q. And then you judged these other distances by having measured the distance between the piles?

A. Yes, other traps.

(Testimony of Ernest P. Walker.)

Q. When did you measure that on No. 11?

A. I believe that was the morning of August 10th.

Q. Was that the time you went out there to make an investigation to see how—

A. That was returning from the trip, after the regular patrol was over.

Q. After it was over?

A. After the closed period was over.

Q. After the closed period was over you made these measurements? A. Yes.

Q. Had you made any measurements of this defendant company's traps between the piles until you got the information for all these indictments?

A. I said approximately ten feet.

Q. I asked you if you did that before?

A. No, I said I knew they were.

Q. What time did you say you visited that trap, No. 11? A. You mean that Monday morning?

Q. I mean to go back there to take the picture the next day.

A. I returned by there Monday morning. You will notice that Saturday evening I was there—it wasn't the next day.

Q. You were there Saturday evening and then went back Monday morning?

A. Returned back there Monday morning. [157—31]

Q. That is the time you took the photographs you showed to the jury? A. Yes.

Q. Was anybody out there on the trap at the time you took the photograph? A. No, sir.

Q. Did you see a watchman out there?

(Testimony of Ernest P. Walker.)

A. The watchman came out while we were about it.

Q. You saw him there? A. Yes.

Q. The trap hadn't been prepared for fishing?

A. He had pulled the tunnel into fishing position.

Q. And you swear that the other parts of the trap remained the same as they were when you were there on the previous times?

A. Approximately the same.

Q. What do you mean by approximately?

A. They hadn't been moved five feet.

Q. They had been moved some?

A. I do not know that they had been moved any.

Q. You say approximately—you mean they would be within five feet as they were on the previous times?

A. They were not closed more than five feet more than they had been.

Q. Then you took this picture when it had been closed fully five feet? A. No, I didn't say that.

Q. Approximately five?

A. No, I didn't say that; I said it had not been closed more than five feet. I don't know that it had been closed an inch.

Q. I say that was the condition it was in when you took the photograph? [158—32]

A. That condition is when I took the picture.

Q. That is the time you say it hadn't been closed any more than five feet from the time you saw it before?

A. Yes, it had not been closed more than that; I didn't say it had been touched. The watchman indicated that it had not.

(Testimony of Ernest P. Walker.)

Q. Do you say it was in the same condition, that it had been changed some?

A. I didn't say it had; I didn't say the heart walls had been touched.

Q. What do you say?

A. I said it had not more than that—you tried to get me to say that it had.

Q. That is the time you took your picture when you say that it hadn't been closed more than five feet—the time you took the photograph? A. Yes.

Q. And there had been some change made in it between the time you saw it and the time you took the photograph?

A. I didn't say any change had been made in the heart walls at all.

Q. What do you say?

A. I said they had not been closed more than that; I didn't say that it had been closed an inch. From what the watchman said, I don't think they had touched them. I said, took the tunnel out.

Q. You didn't take that in the photograph?

A. It shows in the picture.

Q. The part marked X doesn't show that.

A. I was inside the heart looking through the tunnel into the pot.

Q. When did you visit trap No. 12, count No. 2?

A. I was there at 8:40 P. M. [159—33]

Q. The same day?

A. July 11th—no, that was August.

Q. What was the distance between those two traps? A. The distance between those two?

(Testimony of Ernest P. Walker.)

Q. Yes. A. I don't know just how far it is.

Q. Approximately?

A. It must be—I don't remember the exact position—I didn't pay any attention to the navigation of it. That is, I don't pay any attention to the navigation at all.

Q. I mean how long did you travel between the two?

A. I don't remember just how long it takes between the two.

Q. Do you know when you reached trap No. 12?

A. I don't know—this note of 8:40 was when we reached—it was probably just when we reached it.

Q. Did you measure it?

A. Yes, we were out on top—we didn't make a measurement with a tape.

Q. Your distances there were based on estimates?

A. Yes.

Q. And how do you say the closing poles of that trap were? How wide was the space on the water level?

A. Why, that was not to exceed ten feet there. The shove-downs were just barely under water, about six inches on top of them and the angle they were it was approximately ten feet.

Q. That is an estimate?

A. Yes. Before you reached the first pile out—I would call that ten feet, granting it was a ten-foot pile.

Q. It was not actual measurement?

A. Not actual measurement, no.

(Testimony of Ernest P. Walker.)

Q. Now, let us go into 1036-B—the time alleged there was on the 9th of August. What time of day were you there, did you [160—34] say—the T. P. Co.'s No. 1?

A. You want them taken up “one, two, three”?

Q. That is the way you testified, Mr. Walker.

A. T. P. No. 1?

Q. Yes. A. I was at T. P. No. 1 at 6:45 A. M.

Q. You didn't make any measurements there?

A. Not with a tape-line.

Q. You didn't get off the boat? A. No.

Q. What did you find the distance of that V-shape was at the water level?

A. Each heart wall approximately five feet at the water level?

Q. Approximately the same sort of pull-back sticks that there were in the others?

A. Yes; that was high tide, or rather high.

Q. I mean the same sort of pull-back sticks; I didn't ask you about the time. A. Yes.

Q. When did you reach trap No. 2, count 2 in the indictment 1036-B?

A. I don't know anything about the indictment number; what was the date of the trap?

Q. Same date. A. That is, on the ninth?

Q. Yes, ninth of August, No. 2.

A. That was 6:40 A. M.

Q. What was the distance between that trap and the last trap you were at?

A. Slightly over 1800 feet—five minute-run.

Q. Your measurements there were estimated and

(Testimony of Ernest P. Walker.)

you didn't make actual measurements? [161—35]

A. Not actual measurement, no.

Q. What did you find the condition was at the water level?

A. The heart walls there were about five feet. That is, about half the distance between those piles, which are approximately ten.

Q. The next one is on the same date and is trap No. 3. What time did you arrive there on that date?

A. 6 A. M.

Q. What is the distance between that trap and the one you just examined previously?

A. What is the distance, you say?

Q. Yes. A. I don't know exactly.

Q. Approximately?

A. About four traps occurred between there; that would be four times a little over 1,800 feet; that was approximately a straight run from 6 A. M. to 6:40.

Q. What did you find about the pull-back sticks and the heart at the water level—approximately the distance? A. About eight feet.

Q. You estimated that? A. Yes.

Q. What time did you arrive at T. P. Co.'s No. 3-A on the same date?

A. 5:55—five minutes before.

Q. What condition did you find the opening between the pull-back stick and the pile in the pot; that is, the distance?

A. That was about ten feet—not to exceed that.

Q. What time did you say you got there?

A. 5:55 A. M.

(Testimony of Ernest P. Walker.)

Q. What time did you get to T. P. Co.'s No. 4 on the same date?

A. That was about 5:52. [162—36]

Q. What did you find about the pull-back sticks there at the water level, the distance between that and the nearest pile in the pot?

A. One was about three feet and the other about five.

Q. You estimated those? A. Yes.

Q. What time did you say you got there?

A. 5:52.

Q. How far was that from the other trap you just examined previously?

A. It was supposed to be 1,800 feet; it may be a little closer than that. The difference in time would indicate that it might be a few feet closer. I might have been a minute away before I noticed the time.

Q. Now, No. 6 on the same date, the same company. Do you remember the time?

A. 5:11 A. M.

Q. What was the distance between the pull-back stick and the nearest pile in the pot at the water level?

A. Approximately ten feet at the water level.

Q. Now, then, count 7, we have T. P. Co.'s No. 9; when were you there? A. That was 4:27 to 4:35.

Q. And what was the condition of the opening at the water level between the pull-back stick and the nearest pile in the pot?

A. One was about two feet and the other about four feet. I landed there.

(Testimony of Ernest P. Walker.)

Mr. WINN.—That is all.

The COURT.—Any redirect examination?

Mr. REAGAN.—I omitted on direct examination to ask where each of these traps was situated. I would like to have permission to do that now. There are some waters that are excepted, [163—37] and I want to show that these are not in those waters.

Redirect Examination.

(By Mr. REAGAN.)

Q. Will you tell where each of these traps is situated?

Mr. WINN.—We object on the ground that it is irrelevant, incompetent and immaterial, and it is not alleged in the indictment whether they were in the open waters, waters excepted by the statute, and it is an absolute and material allegation, and we will show that in all these indictments you have to mention that they are not in the excepted waters. You have to make that or if you don't the indictment is fatally bad. He cannot prove it, because it was not alleged, and I will state to the Court now that that is one of our main points against the indictment.

The COURT.—Just a moment; the jury is excused until two o'clock. You can argue that point at 1:30 o'clock. (Whereupon the jury was admonished and court adjourned until 1:30 P. M. the same day, when court reconvened pursuant to adjournment. From 1:30 P. M. till 3 P. M., argument while jury was out of courtroom. At three o'clock the jury was called and all being present, the Court again admonished the jury and excused them until 10 o'clock A. M., Oc-

(Testimony of Ernest P. Walker.)

tober 29, 1914. After the jury had retired, counsel resumed argument, after which Court adjourned until 10 o'clock A. M., October 29, 1914, when court reconvened pursuant to adjournment, at which time the clerk called the jury and all answered present.)

The COURT.—The objection to the question will be overruled. I have made an examination of the authorities and considered the arguments made yesterday, but I don't see any reason for changing the rulings I made at the time they [164—38] were raised or suggested on demurrer or motions to strike.

ERNEST P. WALKER, a witness called and sworn by the plaintiff, being recalled for further re-direct examination, testified as follows:

Mr. WINN.—I would like to ask the witness a few questions on cross-examination. This is in the nature of a new question.

The COURT.—Very well.

Cross-examination.

(By Mr. WINN.)

Q. Mr. Walker, how many of these traps that are enumerated in these three indictments are double-hearted? A. What is the question?

Q. How many of these traps that are enumerated in these indictments, traps which I questioned you about yesterday, are double-hearted?

A. I do not remember the number.

Q. Are any of them?

A. I do not recollect that.

Q. You know what a double-hearted trap is, don't you? A. Certainly.

(Testimony of Ernest P. Walker.)

Q. How wide was the entrance to the heart of the trap, where the lead intersects the heart?

A. On each side of the lead it will be approximately ten feet, maybe a little over, maybe a little less.

Q. How do you know it would be approximately when you answered the question that you didn't know whether it was single-hearted or double-hearted?

A. What does that have to do with whether it was double-hearted? [165—39]

Q. Do you say that these traps would be fifteen feet on either side of the lead? Now the lead—if it has two entrances, it is to lead—(indicating).

A. There are two different terms used for double-hearts.

Q. I refer to a trap like that *were* there are—

A. If you choose to call that a double-heart—there is also a term double-heart—

Q. What do you mean?

A. There is one double-heart with an apex—one is entering the apex of the other; that is also used.

Q. There are two hearts in that kind of a trap before they reach a pot of the kind—

A. They go through two hearts.

Q. Are any of these traps traps of that nature?

A. I don't know; I don't remember.

Q. How many have double entrances with intersected hearts?

A. I don't remember; I didn't pay any attention to that—I didn't care about it.

(Testimony of Ernest P. Walker.)

Q. What was the size of the opening of these hearts where the lead intersects it?

A. They will average about ten feet, maybe a little more, maybe a little less. I didn't care about that, so I didn't pay any particular attention to it.

Q. You didn't pay any particular attention to that part of it? A. I didn't have any occasion to.

Q. Do you know the size of the pots of these traps that are enumerated in the indictment?

A. They are constructed approximately forty by forty.

Q. You didn't know these traps sufficiently well to tell this jury whether or not any of these traps are constructed like the model—that is, whether they had an entrance on both [166—40] sides of the lead or only on one side?

A. It doesn't necessarily apply to any particular trap—it is general.

Q. You didn't notice these traps in these indictments sufficiently well to tell this jury as to whether or not there were two entrances at the intersection of the heart?

A. Some of them have two. I don't remember which had one and which had two.

Q. Would you swear that any of them have two entrances?

A. I know some of them have, but I can't recollect the ones.

Q. You say the average trap has an entrance on either side of the heart of fifteen feet; that is, speaking generally—not speaking of these traps?

(Testimony of Ernest P. Walker.)

A. They would be approximately that. I have entered with a rowboat and entered that way.

Mr. WINN.—That is all.

The COURT.—Have you any redirect examination on that?

Mr. REAGAN.—No, sir.

The COURT.—Let the record show that Mr. Walker is recalled for further redirect examination.

Redirect Examinaiton.

(By Mr. REAGAN.)

Q. Mr. Walker, will you state where these traps are situated that you have testified to here?

Mr. WINN.—We object to the question for the reason that it is incompetent, irrelevant. and immaterial, on the charges made in the indictment, and that, insomuch as they haven't set forth in these indictments that these [167—41] traps were not in the open waters or open fields, where they can be fished at any and all times and all seasons, that the question cannot be answered for that reason. They haven't properly pleaded so as to show where they are.

The COURT.—The objection will be overruled.

A. In the First Division of Alaska.

Q. (By Mr. REAGAN.) In what waters?

Mr. WINN.—Same objection.

The COURT.—Same ruling.

A. The waters of Icy Straits and Chatham Straits—in that district.

Q. (By Mr. REAGAN.) Section eleven of the Act under which this prosecution is had, provides

(Testimony of Ernest P. Walker.)

that the Secretary of Commerce and Labor is authorized to make and establish such rules and regulations, not inconsistent with the law, that may be necessary to carry into effect the provisions of the Act. Do you know whether or not the secretary has made any regulations in regard to fish-traps? A. He has.

Q. Will you state whether he has made any regulations or ruling in regard to the marking of traps?

Mr. WINN.—I object on the ground that it is not the best evidence.

The COURT.—This question is whether he has.

A. He has.

Q. (By Mr. REAGAN.) Will you state whether the traps are marked? A. They are.

Q. How are the traps of this defendant company marked?

A. T. P. Co., then follows the number.

Q. Number 1, 2, 3, 4, etc.? A. Yes. [168—42]

Q. Have you testified to any traps that do not belong to this company in this examination?

A. I have not.

Q. Will you state what these traps are, these contrivances that this defendant maintains in the waters of Icy Straits?

Mr. WINN.—I object to the question as incompetent, irrelevant and immaterial under the pleadings. If he has got to show what kind of traps these are, it comes within the argument we made yesterday. That is a material part of the indictment, and if it isn't, this question would be immaterial, and, in-somuch as it is not alleged what kind of traps they

(Testimony of Ernest P. Walker.)

are, the question is incompetent, irrelevant and immaterial under the indictment.

Mr. REAGAN.—I have alleged that they are fish-traps; I want to prove it.

The COURT.—Objection overruled.

A. They are trap-nets or fish-traps.

Q. (By Mr. REAGAN.) What is the fact as to whether they are stationary or floating traps?

A. They are stationary.

Q. Did you measure any of the piles of these traps at the outer limit of the heart close to the pot to find out their length from the capping to the ocean bed?

A. I did.

Q. Will you state what the measurement was that you ascertained?

Mr. WINN.—I object to the question as not being proper. I think this was covered; he stated he made only one measurement. If these indictments were found on one trap and that—

The COURT.—Read the question. [169—43]

(Q. read by stenographer:) Will you state what the measurement was that you ascertained?

The COURT.—Do you mean the measurement of the opening?

Mr. REAGAN.—The measurement of the piles. I want to know the length of the piles up and down.

The COURT.—Objection overruled.

Mr. WINN.—What piles?

Mr. REAGAN.—Pile of the heart close to the pot of one of these traps.

The COURT.—Which one of the traps?

(Testimony of Ernest P. Walker.)

Q. (By Mr. REGAN.) Which trap did you measure? A. No. 11.

Q. What was the length of the pile?

A. Seventy feet.

Q. Do you know from your measurement of that pile and your observation of the other traps approximately the length of the pilings, of the other pilings at that point in the trap?

A. They are approximately the same.

Q. The same—about seventy feet?

A. About that.

Q. How far, if you know, from the capping down is the short shove-down attached to the long shove-down of these traps, generally?

Mr. WINN.—He already testified to that yesterday. I repeated it and I went over it on each trap. He testified that in his judgment it was about thirty feet.

Q. (By Mr. REAGAN.) Is that correct?

A. In one instance it is twenty-four feet; I said it did not exceed thirty feet.

Q. Now, have you made a sufficient observation of the traps in question in these indictments, from which you can illustrate [170—44] to the jury how these traps operated from this illustration here?

A. I can.

Q. I wish you would step down here and illustrate how these traps operated.

Mr. WINN.—I object on the ground that it is irrelevant, incompetent and immaterial, and it is going over the direct examination he had with the wit-

(Testimony of Ernest P. Walker.)

ness before. This would-be model—we objected to the witness testifying to it. The proper foundation hasn't been laid.

The COURT.—He hasn't been qualified?

Mr. WINN.—He hasn't been qualified to testify to the construction of the trap. It is not shown to be authenticated.

The COURT.—I think you ought to qualify him a little more.

Mr. WINN.—I beg the Court's pardon, but I understood when counsel—I want to understand at this time whether we are going to enter on direct examination on the whole case and go over that this morning.

The COURT.—I understood that myself, but if he wants to recall him on something else, he may do so.

Q. (By Mr. REAGAN.) Mr. Walker, are you familiar with the defendant company's traps about which you have testified that are mentioned in these indictments sufficiently to explain their construction?

A. Yes.

Q. Will you state whether or not this exhibit for illustration is, generally, in its make-up, of such character that would aid you in illustrating the construction of these traps to the jury?

A. It is. [171—45]

Q. And all of the traps mentioned in the indictment? A. It is.

Q. Will you state who caused this trap—this illustration to be made? It was made under your

(Testimony of Ernest P. Walker.)

supervision, was it? A. It was.

Q. For the purpose of illustrating the traps in this case? A. Yes, sir.

Mr. REAGAN.—I ask permission of the Court to use this trap for the purpose of illustrating fish-traps.

The COURT.—Do you mean fish-traps in general, or fish-traps mentioned in this case?

Mr. REAGAN.—The fish-traps mentioned in this case only.

The COURT.—He hasn't testified that that is a correct representation of the fish-traps in this case.

Mr. REAGAN.—Yes; that is just what I asked him.

The COURT.—He can't testify to it unless he testifies now that that generally is a representation of the fish-traps in question. He may have made it for that purpose, but unless it is—

Q. (By Mr. REAGAN.) Will you answer whether or not this is a general representation of the fish-traps in these cases? A. It is.

Q. In all essential particulars? A. It is.

Mr. REAGAN.—I now ask leave.

The COURT.—Any objection?

Mr. WINN.—He hasn't testified—

The COURT.—Yes, he has.

Q. (By Mr. REAGAN.) Will you tell us how the fish-traps about which you have testified, mentioned in these indictments, are constructed? [172—46]

Mr. WINN.—I object on the ground that it is irrelevant, incompetent and immaterial under the allega-

(Testimony of Ernest P. Walker.)

tions in the indictments, and that there is no foundation for the question, and that this witness has already shown on cross-examination all he knows about fish-traps and fishing, and I submit that that being before the Court shows that this witness is absolutely incompetent to testify in regard to fish-traps.

The COURT.—Objection overruled.

Q. (By Mr. REAGAN.) Will you state what this represents? (Indicating.)

A. This represents the lead.

Q. Where is a fish-trap—any of these fish-traps we have been talking about?

A. The lead stretches from the shore to the heart.

Q. About what distance?

A. That may vary from a hundred feet to a mile.

Q. It is made with piling, is it?

Mr. WINN.—I object to the question. Let him testify about the traps contained in the indictments.

The COURT.—He is asking the witness what the lead of a fish-trap is.

Mr. WINN.—What difference does it make when it is in somebody else's traps?

The COURT.—What difference does it make in this case whether it is in this case or something else?

Q. (By Mr. REAGAN). These represent piles? (Indicating.)

A. Yes.

Q. This is the netting—stretching the whole length, does it? A. Yes.

Q. What does this represent? [173—47]

A. The heart.

(Testimony of Ernest P. Walker.)

Q. Does this represent the distance the lead enters into the heart? A. Yes, approximately so.

Q. Will you state how the fish get into the heart?

A. Being stopped by the lead, they cannot go upon the land, so they move towards deep water, entering through one or both openings, as the case may be.

Q. Something similar to a rat-trap? A. Yes.

Q. Will you state when the fish are caught?

Mr. WINN.—I object on the ground that no foundation has been laid for the question. He has never caught a fish.

The COURT.—You will have to show that he knows how they are caught—knows how fish-traps operate.

Q. (By Mr. REAGAN.) Have you seen fish caught in traps? A. I have.

Q. Will you state how they are caught?

Mr. WINN.—I object on the ground that it calls for a conclusion.

The COURT.—Ask him what happens to the fish after it gets into the heart. Can he get out again?

A. It cannot escape, ordinarily.

Q. (By Mr. REAGAN.) It is then substantially caught? A. Practically caught.

Q. What happens to it? What is this part here?

A. That is the tunnel.

Q. What is it made of?

A. Webbing or netting—wire netting in some cases—the same shape. [174—48]

Q. This portion here; what is this called?

A. The pot.

(Testimony of Ernest P. Walker.)

Q. This portion? A. Spiller.

Q. What is this little thing here?

A. That is the other tunnel, leading to the spiller.

Q. From the pot to the spiller? A. Yes.

Q. What is the function of the spiller?

A. Practically a reservoir.

Q. As to unloading fish from a trap, what is its function?

A. The fish are taken from it, from the spiller, into boats or scows.

Q. After fish are in the heart and this tunnel is in working order, open, what is the next happening?

Mr. WINN.—Same objection to all these questions on account of the incompetency of the witness and no foundation laid to answer the questions.

The COURT.—Same ruling.

A. The fish enter the pot.

Q. (By Mr. REAGAN.) If this tunnel is open and in working order, what happens as to the fish after they get into the pot?

A. They will finally work into the spiller.

Q. What does this represent? (Indicating.)

Mr. WINN.—Object to it as already having been covered.

Mr. REAGAN.—It hasn't been illustrated—I am illustrating.

The COURT.—Objection overruled.

A. The long shove-down.

Q. (By Mr. REAGAN.) And this? (Indicating.) [175—49]

A. The short shove-down.

(Testimony of Ernest P. Walker.)

Q. Will you state how the webbing was on the traps that you saw on each of the occasions that you have testified to here?

Mr. WINN.—I object to it.

The COURT.—I don't know whether you intend to go over the whole thing again or what you are doing.

Mr. REAGAN.—I want to illustrate how it is fastened.

Mr. WINN.—Did the same thing yesterday.

Mr. REAGAN.—The trap hasn't been used for that.

Q. Is this the way it is when opened?

Mr. WINN.—Same objection.

A. It is.

Mr. REAGAN.—That is all.

Recross-examination.

(By Mr. WINN.)

Q. You say this thing here you have testified concerning represents the construction of the fish-traps that are enumerated in these indictments, do you?

A. Essentially so.

Q. Essentially so. Did you ever see a fish-trap in your life that was constructed—that had the bottom of the pot approximately on a level with the bottom of the heart?

A. You will notice there is a break that shows it is not.

Q. Answer the question. Did you ever see a fish-trap in your life that had the bottom of its pot approximately on a level with the bottom of the sea or bottom of the heart? A. No.

(Testimony of Ernest P. Walker.)

Q. This is approximately so, isn't it? (Indicating.) [176—50]

A. You will notice by the model that the webbing on the heart goes lower; there is a break here under the pot and spiller; that break may be an indefinite distance.

Q. Do you know the depth of the pots of this company's traps? A. Approximately forty feet.

Q. And how long did you say these other pilings were? A. Seventy.

Q. Then there could—the bottom of the pot couldn't be on the bottom of the sea like this here?

A. The bottom of the pot is not.

Q. That couldn't be? A. No.

Q. By at least thirty or forty feet if these piles next to the port are seventy feet long? A. Yes.

Q. Now, then, you have constructed this model or it was constructed under your care and shows a double entrance?

A. It can be made to be either one or two; you will notice it has an arrangement for both.

Q. You don't know how many of these traps of the defendant company have double-hearts and when I say double-heart I mean a double entrance?

A. No, I don't remember.

Q. You don't know how wide the entrance to the heart from the lead is in any of these traps of the defendant company?

A. I wouldn't say; I wouldn't know.

Q. Did you ever measure any of them?

A. Not actual measurement.

(Testimony of Ernest P. Walker.)

Q. You just guessed at them?

A. I estimated because I had been through with a rowboat.

Q. You guessed at it? [177—51]

A. I don't consider it a guess there.

Q. What? A. I told you, no.

Q. How many hearts of the traps of the defendant company did you enter with a rowboat?

A. One or two.

Q. What numbers were they?

A. No. 11, I remember distinctly.

Q. When did you do that?

A. That was on the morning—the same morning I took the pictures.

Q. That was before the indictments? A. Yes.

Q. Is No. 11 double or single-hearted in the meaning I have referred to about the entrance at the lead?

A. Single, if I remember rightly.

Q. Would you be positive—you are pretty good at estimating—I want you to be positive whether No. 11 has a double or single-heart entrance?

A. I am quite sure it has only an entrance on the right-hand side; that is, the lower side—that it only fishes from one side of the lead.

Q. You went through that with a rowboat, and still you will not testify to that positively, whether it had a double or single entrance?

A. I went through by the one side.

Q. I say you were out there and entered the heart with a rowboat, but will not swear to the jury positively that there was one or two entrances to the heart?

(Testimony of Ernest P. Walker.)

A. Let me think a moment as to what I remember about that. It has only one entrance.

Q. How wide is it? [178—52]

A. Between ten and fifteen feet.

Q. You are positive of that, that it has only one entrance—after you have thought it over?

A. I am quite sure of that.

Q. Are you positive? A. Yes.

Q. You are positive? A. Yes.

Q. What is the width of it?

A. What is the width of it?

Q. Yes.

A. I said between ten and fifteen feet, I would judge.

Q. Can you jog your memory a little further and tell me as to how many of these traps included in these indictments have double-entrances?

A. I didn't pay any attention to that—it didn't concern me as to that.

Q. It didn't concern you as to that?

A. It didn't make any difference to me.

Q. You testified a while ago that you considered that fish were caught when they got into the heart?

A. Practically caught.

Q. Wouldn't it concern you as to whether or not they were caught—you testify to the entrance of the heart, to the lead—wouldn't you take that into consideration? A. I don't see your point.

Q. You say that the fish are practically caught, in your judgment, when they enter the heart?

A. Yes.

(Testimony of Ernest P. Walker.)

Q. Now, as to whether or not they were caught, wouldn't it depend upon the width of the entrance to the heart? [179—53]

A. A trap would not be effective if it were so lashed to allow them to escape back in any considerable quantities.

Q. If they have double entrances, there would be thirty feet?

A. There might be twenty to thirty. I said also that it might be less than ten.

Q. You are going to modify it again, are you?

A. I said it would not exceed fifteen—I said approximately ten.

Q. Give me your best judgment of the width.

A. I said about ten.

Q. Going to cut out the fifteen?

A. It may be as much as fifteen in some of them.

Q. You say they range between ten and fifteen?

A. I say approximately ten and maybe as much as fifteen in some.

Q. Those some you can't state to this jury whether they were the particular traps in this case?

A. Particular traps in what case?

Q. This case? A. No. I can't.

Q. In any event, in double entrances you would have between ten and twenty feet of opening in there, wouldn't you? A. Yes.

Q. And if there is only one opening and that is ten or fifteen feet, it would be ten or fifteen feet?

A. It could be if there was only one.

Q. Your contention is that they just herd each

(Testimony of Ernest P. Walker.)

other and make no effort to get out of it when they get in the heart?

A. They work towards deep water.

Q. Don't they ever work back towards the place of entrance?

A. There would be no object in working towards shallow water.

Q. Will you swear that they don't work around in there and try every effort to get out?

A. They are so constructed that they turn in each one and swing. [180—54]

Q. How many times did you ever watch one of these fish-traps fish? A. Several times.

Q. When—how—where?

A. Do you want the exact dates?

Q. Yes.

A. On the—I believe the tenth of June.

Q. What trap did you watch on the 10th of June?

A. On Heceta Island, West Coast of Prince of Wales Island.

Q. A trap of this company?

A. Not of this company—a similarly constructed trap.

Q. Will you confine your testimony to the traps of this company? How many times did you watch traps of this company fish? A. Twice.

Q. When?

A. On the evening—it was No. 12, then No. 11 the same evening.

Q. How long did you watch them?

A. I should judge that I watched No. 12 fifteen

(Testimony of Ernest P. Walker.)

minutes, seeing fish coming in, and No. 11 perhaps—over ten or fifteen—something like that.

Q. Were these the only times you have watched fish-traps fish?

A. Of this particular company. They all operate essentially the same.

Q. Was there any watchman on the trap at the time you watched them? A. No.

Q. Anybody there?

A. On the No. 12 Mr. Neville and Mr. Ward came up and watched the fish with me.

Q. Those two boys you took out with you?

A. Captain and engineer of the boat. [181—55]

Q. That is the only time you ever watched? You say—I want to know—that it doesn't matter whether this opening is fifteen, ten, twenty, or thirty feet to the heart, that in your judgment you consider the fish practically caught when in the heart?

A. Owing to the shape.

Q. I don't care for that; answer the question.

A. They are practically caught when in the heart.

Q. And that opening has nothing to do with the fish escaping at all? The fish don't escape there; is that what you want the jury to understand, that they wouldn't escape?

A. Some fish may, but the way it is constructed they do not, or at least not in great quantities.

Q. You arrive at that by examining traps about fifteen minutes? A. No, not by that.

Q. How many times have you ever watched any other traps?

(Testimony of Ernest P. Walker.)

A. Your company has arrived at that conclusion, that they don't escape in any great quantities.

Q. I am not asking about my company. How many traps have you ever examined?

A. How many others?

Q. Yes.

A. You mean watched them fish?

Q. I mean how many you have ever watched fish. Give me the times and how.

A. As I told you, it may be the tenth of June, on the south end of Heceta Island.

Q. How long did you watch that fish?

A. That was ten minutes that evening and again the next morning.

Q. How many minutes the next morning did you watch it? A. Just a few moments. [182—56]

Q. When did you ever watch another trap-fish?

A. The Alaska Packers Association.

Q. State when you watched that trap,

A. That was on July 5th.

Q. This year? A. Yes.

Q. How long did you watch that trap-fish?

A. I was around the trap for perhaps half an hour off and on.

Q. When else did you watch a trap-fish?

A. The No. 11 of this company, No. 12 of this company—

Q. You gave that a while ago. Are those the only traps?

A. Then there is the Pacific American Fisheries traps.

(Testimony of Ernest P. Walker.)

Q. When did you watch that and how long?

A. I don't remember the exact date; it was possibly ten or fifteen minutes.

Q. When was that? A. August, I believe.

Q. This year? A. Yes.

Q. Is that all you watched fish?

A. That is all I recall just now. I have been on others and seen them—

Q. Virtually your experience in the fishing business has been this year. You didn't have much last year? A. Not a great deal.

Q. And from that experience you made this examination about the shove-downs and you have described to this jury while you have been on the stand?

A. The times I watched them fish wouldn't count the time I have measured—measuring is additional time—measurements, drawing, photographs is additional time. [183—57]

Q. I mean when on the trap—I don't mean in the office with a lead pencil.

A. I don't mean in the office—I mean on traps.

Q. You made this in town? (Referring to model.)

A. That was part of my drawings and measurements of the traps.

Q. What is this? (Indicating.)

A. That is the pot and spiller, one-half of an inch to a foot, with a contrivance between that piece which is necessary to screw that pipe.

Q. You never did see a trap that had the regular-

(Testimony of Ernest P. Walker.)

ity of piles as this?

A. Some of them are sawed off very evenly.

Q. I mean regularity of the distance between them?

A. That varies somewhat; I think if you measure some of them you will find a similar variation.

Q. You never did see any trap that had the variation between the piles of the heart like this?

A. That doesn't have absolute regularity; you see, one-half an inch represents a foot.

Q. If the fish are practically caught when in the heart, what is this pot for?

A. That is practically a reservoir.

Q. And what is the next place?

A. The spiller is still another reservoir.

Q. And each one of them has an entrance—the first one, the pot, has an entrance from the heart through a tunnel. About what is the width of the tunnel at the point where it leads into the pot from the heart; what is approximately the width?

A. That is approximately ten feet.

Q. About how wide is the tunnel at its end, which ends in the pot? [184—58]

A. The spreader bars are about eighteen inches in length between them. It opens slightly more.

Q. What is the width of the entrance from the pot—of the tunnel that leads into the spiller?

A. That is also approximately ten feet.

Q. What is the width of the tunnel that terminates in the spiller?

A. That is about eighteen inches.

(Testimony of Ernest P. Walker.)

Q. Then you would consider a fish just as practically caught in this heart with an opening of twenty to thirty feet as you would when he got out here in the pot or into the spiller?

A. I didn't say that.

Q. You said he was practically caught.

A. Practically so.

Q. Don't you know that the remaining parts of this trap are constructed for the purpose of catching salmon?

A. Still more preventing the possibility of escape.

Q. They would be more apt to escape between a twenty or thirty feet entrance than they would an eighteen-inch entrance to the pot and another eighteen-inch entrance in the spiller?

A. They are practically hopeless from the pot and practically less hopeful after they get into the spiller. They could go back, but the way it is shaped they are not likely to.

Q. I suppose not, because these contrivances are the parts they want to catch the fish in, these two last ones.

A. That, together with the heart.

Q. Did you ever see fish—the action of them in these hearts for any length of time and see them commence shooting through even after they get into the spiller—one fish will shoot through this entrance—did you ever see them go through [185—59] whole schools, right out of the spiller to the pot?

A. I have never seen them do any such thing as that.

(Testimony of Ernest P. Walker.)

Q. Have you ever watched them?

A. I have tried to say if they did I have never seen one.

Q. Where were you when you watched them?

A. When I was on other traps.

Q. That was ten or fifteen minutes that you passed them?

A. I was on them and in some cases I have been in a boat inside of the heart watching them.

Q. The instances you were doing that were the instances you have mentioned to the jury?

A. Yes.

Q. And those brief periods you didn't see any such actions as I have indicated?

A. I didn't see them go back through that way, no.

Q. Where were you?

A. On top of the trap in one instance.

Q. When were you—

A. Other times I was on top of the trap, sometimes in a rowboat.

Q. How many times on top of the trap?

A. The times I have named—you have probably kept track of that.

Q. How many times—three times?

A. Five, I believe I gave you, in addition to the time I was in the heart.

Q. Did you ever during these times you have been there see them shoot out through the tunnel back into the heart? A. I have never seen that.

Q. Did you ever see a fish get out through the

(Testimony of Ernest P. Walker.)

heart—through one of these arrangements from twenty to thirty feet; have you ever seen them get through there? A. No, sir. [186—60]

Q. Never did? A. No, sir.

Q. You weren't watching particularly, were you?

A. I was watching to see all I could about that.

Q. You are not a practical fisherman?

A. What do you mean?

Q. You are not a practical fisherman—you know what that means?

A. I am not engaged in commercial fishing, no.

Mr. WINN.—That is all.

(Witness excused.) [187—61]

[Testimony of Jesse L. Neville, for Plaintiff.]

JESSE L. NEVILLE, a witness called and sworn in behalf of the United States, testified as follows:

Direct Examination.

(By Mr. REAGAN.)

Q. Mr. Neville, will you state your name to the jury, please? A. Jesse L. Neville.

Q. What were you doing during the months of July and August this year?

A. Master on the "Santa Rita" for E. H. Kaser.

Q. What business was the "Santa Rita" engaged in?

A. She was chartered for the U. S. Fish Bureau Commission.

Q. Do you reside in Juneau? A. I do.

Q. How long have you lived there?

A. Three years and a half.

Q. Taking up indictment No. 1034, Mr. Neville,

(Testimony of Jesse L. Neville.)

will you state whether or not you made, between the hours of six o'clock Saturday, July 11th, 1914, and Monday morning, July 13th, 1914, at six o'clock, a trip to the fish-traps belonging to the Thlinket Packing Company? A. I did.

Q. Did you during that trip visit their trap No. 1?

Mr. WINN.—I see the witness is looking at a piece of paper; I would like to know what the paper is.

The COURT.—Yes, you cannot look at a paper unless it is necessary to look at it to refresh your memory. If you can testify without looking at the piece of paper, do so.

A. (By the WITNESS.) I can't testify accurately; we covered [188—62] a good many miles that trip and these notes are for the purpose of refreshing my memory. They were made at the time I was with Mr. Walker.

Q. (By Mr. REAGAN.) You say you can't remember without refreshing your memory from the notes?

A. I can testify, but I can't testify accurately without the notes.

Q. Were those notes made at the time you visited the traps? A. Yes.

Q. Did you put down accurately what you observed? A. I did.

Mr. REAGAN.—I ask that the witness be allowed to refresh his memory from the notes, if the Court please.

The COURT.—Any objection?

(Testimony of Jesse L. Neville.)

Mr. WINN.—Yes, sir, I object to it as being incompetent and immaterial. The witness has testified that he can remember without the notes.

The COURT.—Objection overruled. He says he cannot testify accurately without the notes.

Q. (By Mr. REAGAN.) Now, refresh your memory with the notes and state whether you visited the trap of this company No. 1?

A. I did, at 9:45 A. M., T. P. No. 1.

Q. Did you look at this trap with reference to the heart walls on each side next to the pot?

A. I did.

Q. Will you state what the fact is as to whether or not—what was the fact as to the condition of twenty-five feet of the webbing or net of the heart of that trap on each side next to the pot at that time?

Mr. WINN.—I object. There has been no foundation laid for the witness to answer the question, if the Court please. [189—63]

The COURT.—What further foundation could a man have?

Mr. WINN.—It hasn't been shown that he knows what the heart of a trap is.

The COURT.—It hasn't been shown that he knows one foot from an inch neither—objection overruled.

A. The heart walls on either side were back about three or four feet—not to exceed four feet on either side.

Q. (By Mr. REAGAN.) How far were they so opened?

(Testimony of Jesse L. Neville.)

A. When I say three or four feet, I have reference to the water line at that stage of the tide.

Q. At the water line about three or four feet?

A. About three or four feet.

Q. What date was that—you have given the hour—what date was it?

A. That was on July 12th, 1914.

Q. Did you visit the trap of this defendant company No. 2 on that trip? A. I did.

Q. What date and what hour did you arrive there?

A. July 12th, 1914, at 9:44.

Q. 9:44 A. M.? A. Yes.

Q. Did you look at that trap with reference to its heart walls so that you can tell what condition the heart walls next to the pot were at that time?

A. Yes, they were back about that—

Mr. WINN.—Same objection—no foundation laid.

The COURT.—Same ruling.

Q. (By Mr. REAGAN.) Did you look to observe—to see? A. Yes, I did. [190—64]

Q. What did you find as to whether or not twenty-five feet of the webbing or net of the heart was on each side of the pot?

Mr. WINN.—Object to that as leading.

The COURT.—Objection overruled.

A. They were back not to exceed eight or nine feet.

Q. (By Mr. REAGAN.) Where was that, at the water-line or above the water-line?

A. At the water-line.

(Testimony of Jesse L. Neville.)

Q. You mean to say by that that twenty-five feet was back that far?

A. No; about eight or nine feet of an opening at the water level.

Q. Did you visit the trap of this defendant company on that trip—trap called No. 3?

A. I did—July 12, 1914, at 9:15 A. M.

Q. Did you observe—did you look at and observe the walls of the heart of that trap at each side next to the pot? A. I did.

Q. What was the condition of twenty-five feet of the webbing or net of the heart of that trap on each side next to the pot thereof on that occasion?

Mr. WINN.—Same objection.

The COURT.—Same ruling.

A. There was an opening of about eighteen inches on one side and about two feet on the other.

Mr. WINN.—Q. What do you mean—opening at the water's edge?

A. Yes, at the water's edge.

Q. (By Mr. REAGAN.) Did you on that trip visit the trap of this defendant company No. 4?

A. Yes. [191—65]

Q. Did you look at and observe on that occasion the walls of the heart of that trap on each side next to the pot of the trap? A. Yes.

Q. What was the condition of twenty-five feet of the webbing or net of the heart of that trap on each side next to the pot on that occasion?

Mr. WINN.—Same objection.

The COURT.—Same ruling.

(Testimony of Jesse L. Neville.)

A. Why, the top of the shove-down was back to about the first pile.

Q. (By Mr. REAGAN.) About what distance?

A. Not to exceed eleven feet.

Q. And how much of an opening was there down to the water's edge?

A. I should judge there would be about six feet—might be a foot more or a foot less.

Mr. WINN.—I move to strike out the answer. The witness' judgment is not testimony upon which the defendant may be—

The COURT.—When a witness says “my judgment of a thing,” it means his estimate.

Mr. WINN.—It may be a guess.

The COURT.—No—there is a difference between a guess and an estimate, a very material difference. Objection overruled.

Q. (By Mr. REAGAN.) Did you on that trip visit the trap of this defendant company No. 5?

A. I did.

Q. Did you look at and observe the walls of the heart of that trap situated next to the pot of the trap? Did you observe it? A. I did.

Q. What was the condition as to being raised or lowered of the [192—66] twenty-five feet of webbing or net of the heart of that trap on each side next to the pot?

A. Back about three feet, that much of an opening at the water line.

Q. What time was that—what date and hour was that when you visited trap No. 5?

(Testimony of Jesse L. Neville.)

A. July 12, 1914, at 8:45 A. M.

Mr. MUNLEY.—Q. Will the witness please state the time he visited trap No. 4;—what hour and date he visited trap No. 4? A. 9 A. M.

Q. (By Mr. REAGAN.) July 12th?

A. July 12th, 1914.

Q. Now, as to trap No. 5, did you observe the condition of the tunnel leading into the pot?

A. I did.

Q. What was that condition as to being opened or closed?

A. It was open and Mr. Walker told the watchman to close it.

Mr. WINN.—What is that—I didn't understand the question?

The COURT.—Yes, strike that out. Gentlemen of the jury, don't pay any attention to what Walker told the watchman.

Q. (By Mr. REAGAN.) As to trap No. 4, did you observe the condition of the tunnel leading into the pot of that trap? A. I did.

Q. What was the condition of that tunnel on that occasion with reference to being open or closed?

A. Why, it was open partly.

Q. Did you on that trip visit trap No. 6 of this defendant company? A. Yes, sir. [193—67]

Q. When and what hour?

A. July 12, 1914, 7:45 A. M.

Q. Did you observe the tunnel leading into the pot of that trap? A. Yes.

Q. What was its condition as to being open or

(Testimony of Jesse L. Neville.)

closed? A. It was just partly closed.

Q. Did you look at and observe the walls of the heart of that trap on each side next to the pot?

A. Yes.

Q. What was the condition of twenty-five feet of the webbing or net of the heart of that trap on each side of the pot with reference to being closed or open?

A. There was an opening on one side of about one foot and about two feet on the other side.

Q. Was that at the water level or some other part?

A. All on the water level.

Q. All on the water level?

A. All on the water level, is where I measured.

Q. Now, we will take up the next number, 1035. Will you state whether or not you made a further trip subsequently and visited those traps, and, if so, what date? A. We did, on August 9, 1914.

Mr. WINN.—Q. August 9th?

A. August 8th and 9th.

Q. (By Mr. REAGAN.) Did you on the occasion of that trip visit this defendant company's trap No. 11? A. I did.

Q. At what hour and what date?

A. On the 8th at 9:20 P. M.

Q. August 8th, 9:20 P. M.?

A. Yes. We tied up there for the night. [194—68]

Q. Did you observe—did you look at and observe the walls of that trap next to the pot? A. Yes.

Q. Will you state what was the condition of

(Testimony of Jesse L. Neville.)

twenty-five feet of the webbing or net of the heart of that trap on each side with reference to its being lifted or lowered or otherwise open?

A. It was not lifted or lowered twenty-five feet.

Q. What was its position?

A. Why, I don't remember exactly the distance at the water level there—I was tying up the boat, and I didn't take down the note. I remember looking at it, but I don't remember the exact distance, but the shove-down was not back of the first pile.

Q. How far back was that first pile from the pot?

A. I should judge—say eleven or twelve feet—ten or eleven feet, approximately that.

Q. Did you on the occasion of that trip visit the trap of the defendant company No. 12? A. I did.

Q. Did you look at and observe the walls of the heart of that trap on each side next to the pot?

A. Yes.

Q. What was the condition of twenty-five feet of the webbing or net of the heart on each side with reference to being lifted or lowered or otherwise open?

A. It was not lifted or lowered or otherwise opened twenty-five feet.

Q. What was its condition?

A. One of the shove-downs was lying almost horizontal. If I remember correctly, there was about six inches over the top [195—69] of it; that is, it was on an angle, but it was under water that angle about six inches, I think.

Q. What hour did you arrive at that trap?

(Testimony of Jesse L. Neville.)

A. August 8th, 8:40 P. M., 1914.

Q. That was at the water level?

A. Water level.

Q. What width was the opening at the water level?

A. Not to exceed seven feet, six or seven feet.

Q. Indictment No. 1036. On that same trip did you visit the trap of the defendant company No. 1?

A. I did.

Q. What time and what date?

A. August 9, 1914, at 6:43 A. M.

Q. Did you notice the tunnel of that trap leading into the pot on that occasion? A. Yes.

Q. What was the condition as to being opened or closed?

A. It was open about a foot below the water and above the water.

Q. Did you look at and observe the webbing of the heart on each side next to the pot of that trap?

A. Yes.

Q. What was the condition of twenty-five feet of webbing or netting of the heart on each side of the pot on that occasion?

A. It was pulled back so as to allow an opening at the water level of about three feet on either side.

Q. Did you on that occasion visit trap designated No. 2 of this defendant company? A. Yes.

Q. What date and what hour?

A. On August 9th, 1914, at 6:38 A. M., T. P. No. 2.

Q. 6:38? A. Yes. [196—70]

Q. Did you notice the tunnel of that trap leading

(Testimony of Jesse L. Neville.)

into the pot? A. I did.

Q. What was its condition as to being open or closed on that occasion?

A. About eighteen inches open.

Q. Did you look at and observe the webbing of the heart on each side next to the pot on that occasion? A. I did.

Q. What was the condition of twenty-five feet of the webbing or net of the heart on each side of the pot with reference to being lifted or lowered or otherwise opened?

A. It was pulled back so as to allow an opening of about three feet at the water level.

The COURT.—The question was, “was it lifted or lowered.” A. No, it wasn’t lifted or lowered.

Q. (By Mr. REAGAN.) *In* any of these traps that you have mentioned lifted or lowered?

A. No.

Q. For a distance of twenty-five feet, I mean?

A. No.

Q. Did you on the occasion of that trip visit the trap of this defendant company designated No. 3?

A. No, I don’t have that—my partner was at the wheel then.

Q. You didn’t see No. 3? A. No, not that trap.

Q. Did you on that trip visit the trap of this defendant company designated No. 3—A?

A. No. My partner was at the wheel then.

Q. Did you on that occasion visit the trap of this defendant company No. 4? A. No. [197—71]

Q. Or six? A. No. I was asleep.

(Testimony of Jesse L. Neville.)

Q. Or nine? A. No.

Mr. REAGAN.—That is all.

Cross-examination.

(By Mr. WINN.)

Q. How many times have you been out with this Fish Commission this season?

A. Three times, I think.

Q. On what dates?

A. On the 8th I know once and on July 11th I think was the first trip out, afternoon of July 11th once,—I forgot when we left, six o'clock Saturday evening, Saturday night, I think. The next time was the 8th.

Q. 8th, 11th, and 12th, did you say?

A. No. I said we left Juneau on July 11th.

Q. How long was you out that time?

A. I think we got back on Tuesday or Wednesday. I don't remember what day.

Q. You say July 11th; when was that?

A. That was on Saturday evening.

Q. I am asking you for the correct days?

A. It might have been the 10th.

Q. Do you remember when you left Juneau?

A. I am pretty positive it was July 11th.

Q. You didn't make any memorandum of that?

A. I have it in the log-book; I will get that if you want it.

Q. To the best of your remembrance it was on July 11th?

A. Yes, to the best of my memory. [198—72]

Q. When you left Juneau, Mr. Neville—I am talk-

(Testimony of Jesse L. Neville.)

ing of the time you left with the fish commission—the first time you left Juneau with the fish commission was when?

A. I think, Judge, it was on the 11th of July in the evening; it might possibly have been the 10th. I don't remember without going and looking it up. I can do that.

Q. What time did you return?

A. I think on Tuesday; I am not sure.

Q. What traps did you visit during that trip?

A. There were so many, I don't remember.

Q. Did you visit the traps of this company?

A. Yes.

Q. I wish you would look at the time, from the memoranda you have, and state to me—I will give you the dates. A. All right.

Q. Didn't you testify on direct examination as being July 13th—12th—that you visited—

A. 13th?

Q. Yes.

A. I don't think I said anything about the 13th.

Q. Where were you on July 13th?

A. I don't know.

Q. Where were you on July 12th?

A. I was on the "Santa Rita" somewhere around Chatham Straits.

Q. That is the time you visited some of the company's traps, on July 12th? A. Yes.

Q. Will you look at your memoranda and see what time it was that you examined trap No. 1?

A. No. 1 on July 12th?

(Testimony of Jesse L. Neville.)

Q. Yes. What time? A. 9:49 [199—73]

Q. In the morning? A. Yes, A. M.

Q. Now, on that same date you have testified that you examined the T. P. Co.'s Trap No. 6? What time on that date did you see that?

A. On T. P. Co. No. 6?

Q. Yes. A. 7:45 A. M.

Q. And in the meantime, between these two hours you have given, you had examined all the company's traps commencing from one to six?

A I don't know; I don't know whether we did or not; I don't know how they come in order there. We might have got to three first, might have got to two first, I don't remember. I can read off the times here and let you subtract them.

Q. Now don't get smart. Can you tell how long you were in examining traps one to six of the defendant company?

A. I can give you the exact times.

Q. Can you tell how many hours you put in there examining those traps?

A. No, not without taking a pencil and paper and figuring it up.

Q. You don't know when you visited the first trap and when you visited the last trap on July—in that series? A. Yes, I can by looking at my notes.

Q. I want to find out when you visited the traps in the series of one to six.

A. I examined trap No. 6 at 7:45 A. M. I examined trap No. 3 at 9:15 A. M. I examined trap No. 1 at 9:49; trap No. 2, 9:44. I can give you all of

(Testimony of Jesse L. Neville.)

them if you wish, the exact times we were there.

Q. Go ahead.

A. Then No. 5 was 8:45 A. M., No. 4, 9 A. M. I think that is [200—74] all of them.

Q. That is the series of six?

A. That is the series of six.

Q. Did you get out of the boat in any of the traps—I guess it is a gasoline boat?

A. It is a gasoline boat. I don't think I got out on any of those traps there.

Q. Then the distances you gave about these places being open was an estimate? A. Why—

Q. Was it an estimate or did you measure it?

A. Measured it with the eye.

Q. Measured it with your eye? A. Yes.

Q. That is the way you got it. How far apart are those traps from one to six; that is, commencing—Do they run in No. 1 and No. 2, No. 3, or how do they run?

A. No, I don't think they do. I don't remember whether they do or not.

Q. What distance of ground did you travel over when you examined traps one to six?

A. I don't know.

Q. Don't you know the distances between the traps? A. No.

Q. What were you, captain or engineer?

A. I was the captain.

Q. You were running the gasoline boat "Santa Rita"? A. Yes.

Q. And you can't give to the jury any estimate

(Testimony of Jesse L. Neville.)

at all to show your running time consumed in running from one to six?

A. I might give an estimate and might miss it from one to two miles. I don't know. The way the traps were situated, they [201—75] were very very far connected and if I might estimate I might make an estimate of between eighteen hundred and two thousand feet, but maybe there would be a trap in between and that would make a difference of a lot of feet.

Q. The traps are not two miles apart?

A. Not that I remember.

Q. Couldn't you give the exact distances?

A. I could give you the distances, I guess.

Q. You don't know the distances between the traps?

A. I think I told you I didn't know the exact distances between the traps.

Q. How far was trap No. 1 from trap No. 6 which you examined that day?

A. I told you I didn't know.

Q. You don't know it?

A. Not any more than you do.

Q. Still you were running the boats and went out there with Walker for the purpose of making this memoranda and testifying in the case, did you?

A. I did, and I am telling you I can go and get our log and give you pretty near the exact distance if you want it.

Q. You couldn't make an estimate without the log?

A. No, I wouldn't; I don't think it is worth while.

(Testimony of Jesse L. Neville.)

Q. In 1035, I believe you said you assisted in examining the Thlinket Packing Company's No. 11?

A. Yes.

Q. And also the company's trap No. 12?

A. Yes.

Q. What time did you arrive—I will ask you this question: Do you know whether you visited trap No. 11 or 12 first?

A. It was No. 12, if I remember right. [202—76]

Q. What time did you get there?

A. We got there at 8:40.

Q. What time did you examine the other one?

A. We examined the other one at 9:20.

Q. What is the distance between those two traps?

A. I should say about eighteen hundred feet, maybe a little more, maybe a little less.

Q. Those traps are near-by, are they? The nearest you can give is that they are eighteen hundred to two thousand feet apart, those two traps?

A. I won't say; it might be two thousand feet or more or two thousand feet or less.

Q. Don't you know that there is not a trap of any one you have been testifying to here any nearer together than a mile? A. I don't know any such thing.

Q. Would you testify that they weren't any closer together than a mile?

A. No, I wouldn't unless you would give me a chance to measure them up. I won't testify to anything I don't know.

Q. I believe in this 1036,—I believe you testified

(Testimony of Jesse L. Neville.)

you visited two or three traps there?

A. Which one?

Q. How many more traps have you got there which you examined—one of these indictments you didn't go to?

A. I went to T. P. Co. No. 2 on August 9th at 6:38 A. M. I think I went to No. 1—I am not certain; I will look it up here. Yes, I went to No. 1.

Q. Did you go to No. 1 and 2 on that date?

A. Yes.

Q. Which one did you examine first?

A. I think we examined No. 2 first; I couldn't swear positively without looking at my notes. [203—77]

Q. Do you remember what time?

A. Yes, the time was 6:38 A. M.

Q. When did you examine the other one?

A. 6:43.

Q. Do you know the distance between those two traps?

A. Of course, I know in a certain way; I know it isn't very far. I don't think it is over sixteen, seventeen or eighteen hundred feet, but I am not going to say that that is the distance.

Q. How many traps did you get out and go on the traps? A. I don't remember.

Q. How many traps did you get out on?

A. I know I got out on eleven and twelve, but I don't remember whether I did the rest or not.

Q. What part did you get on on traps No. 11 and 12? A. On the trap.

(Testimony of Jesse L. Neville.)

Q. Do you know the heart, pot, spiller and lead?

A. I do.

Q. Tell what part you got on.

A. I climbed on top of No. 12 until I got on top of the foot-pole and walked all around it.

Q. Climbed the rope from what part of the trap?

A. Fish-trap.

Q. Heart or spiller?

A. I don't remember whether it was the heart or spiller; I think it was pretty near the center of the trap, if I remember right.

Q. That is No. 12? A. Yes.

Q. How long did you stay at that time?

A. I don't know.

Q. What part of the trap did you get off at?

A. I don't know. Maybe the watchman can tell you. [204—78]

Q. Why don't you answer? A. I don't know.

The COURT.—Wait a minute. If you don't know, don't say anything but that you don't know.

Q. (By Mr. WINN.) What part of the trap were you on on No. 11?

A. All over the trap except on the lead.

Q. How long did you stay there?

A. I don't know that either.

Q. These were the only two traps you were on?

A. On that particular date I think they were.

Q. How many traps were you on of this particular company?

A. I don't remember; I know I have been on a

(Testimony of Harry Ward.)

good many traps, but I don't remember which one nor when.

Mr. WINN.—That is all.

(Witness excused.) [205—79]

[**Testimony of Harry Ward, for Plaintiff.**]

HARRY WARD, a witness called and sworn in behalf of the United States, testified as follows:

Direct Examination.

(By Mr. REAGAN.)

Q. Mr. Ward, will you state your full name to the jury? A. Harry Ward.

Q. You live in Juneau? A. Yes, sir.

Q. How long have you lived here?

A. It will be four years next August.

Q. What were you doing in the months of July and August, Mr. Ward?

A. I was engineer aboard the "Santa Rita."

Q. Now, Mr. Ward, will you state whether or not you made any trips with the "Santa Rita" during July and August? A. I did.

Q. With whom?

A. With the U. S. Fish Commissioner.

Q. Do you remember the date of the first trip you made in July last? A. July 11th, I think.

Q. On the occasion of that trip, will you state whether or not you visited the trap belonging to the defendant company called and designated trap No. 1?

A. On July 11th?

Q. On the occasion of that trip you started out on July 11th? A. I did visit it, yes.

Q. Do you remember what hour you reached there?

(Testimony of Harry Ward.)

A. On July 11th, trap No. 1?

Q. On what date did you reach that trap? [206—80]

A. We left here July 11th and I think we got up there the morning of the 12th in the forenoon.

Q. Do you remember what hour of the 12th you reached trap No. 1?

A. I think it was around nine o'clock sometime; I couldn't say for sure, because I have lost my notes on that.

Mr. WINN.—I move to strike out the answer. The witness says he simply thinks it was a certain hour. The times in these indictments are matters of importance.

Mr. REAGAN.—Time isn't essential as long as we get it between the hours mentioned in the law. I am asking what time he got there—that is all.

The COURT.—Objection overruled.

Q. (By Mr. REAGAN.) Did you observe that trap on the occasion of that trip, Mr. Ward, with reference to the webbing on each side of the heart—at the time of that trip?

Mr. WINN.—I object to it. There is no time set.

The COURT.—Objection overruled.

A. I did not of No. 1.

Q. (By Mr. REAGAN.) Did you or did you not reach the trap—trap No. 2 of this defendant?

A. Yes.

Q. Do you remember when you reached there?

A. I don't remember the hour; it was a few minutes later—a few minutes run, that is all.

(Testimony of Harry Ward.)

Q. Do you remember what order—which one you reached first, No. 1 or No. 6?

A. We started at six and went up to one on these particular traps.

Q. So the time would be earlier?

A. Backwards, yes.

Q. Did you observe on the occasion of that trip and at the time of visiting that trap the webbing of the heart of that trap [207—81] on each side of the heart next to the pot?

Mr. WINN.—If he answers “yes or no,” I have no objection.

The COURT.—Answer the question yes or no.

A. What is the question again?

Q. (By Mr. REAGAN.) Did you observe—look at and see the webbing of the heart of that trap on the occasion of that visit? A. No, not on No. 2.

Q. You didn’t see No. 2. Did you on the occasion of that trip visit trap No. 3 of this defendant company? A. Yes, we did.

Q. And you arrived there a little earlier than you did on the other, I suppose? A. Yes.

Q. Did you observe—did you look at and see the webbing on the heart of that trap next to the pot?

A. I noticed them, yes.

Q. Will you state from your observation made at that time what was the condition of twenty-five feet of the webbing or netting of the heart next to the pot of that trap with reference to being lifted or lowered?

Mr. WINN.—I object to the question as incompetent and immaterial,—no time placed.

(Testimony of Harry Ward.)

The COURT.—He says this trip, the 12th, a few minutes before the other one. It seems to me that the time is absolutely immaterial provided it is the time between six o'clock Saturday night and six o'clock Monday morning.

Mr. WINN.—He hasn't fixed the time.

The COURT.—Suppose he can't fix it, but any time somewhere between those two dates. He has fixed it between those two dates. That is good enough. [208—82]

Mr. WINN.—The 11th, as I understand, was on Saturday.

Mr. REAGAN.—Yes. He said he arrived there the morning of July 12th.

The COURT.—Objection overruled. Fix the time as near as you can.

Q. (By Mr. REAGAN.) About what hour, if you remember, did you arrive at the trap?

A. It was in the morning—must have been around eight o'clock. I can't say for sure, but I know it was around that time.

The COURT.—Q. Morning of what date?

A. Morning of the 12th.

Q. What day of the week? A. Sunday.

Q. (By Mr. REAGAN.) I ask you what was the condition of the webbing or net of the heart of that trap, twenty-five feet thereof next to the pot, with reference to being lifted or lowered?

A. Well, I noticed it was around—the shove-down was around—the short shove-down, the top of it was around the first pile, just about back to the first pile.

(Testimony of Harry Ward.)

Q. How many feet?

A. I should say about twelve feet.

Q. With reference to the entire twenty-five feet, what would you say as to its condition with reference to being lowered or raised, the twenty-five feet of the webbing next to the pot?

A. I should say it wasn't.

Q. Wasn't lowered?

A. Wasn't lowered or raised, either one.

Q. Now, did you visit on that occasion the trap of this defendant company No. 4?

A. Yes. [209—83]

Q. Did you notice the condition—did you observe the heart walls of that trap for a distance of twenty-five feet back from the pot—did you look at it?

A. I did.

Q. What was the condition of twenty-five feet of the webbing or net of the heart of that trap next to the pot with reference to being raised or lowered?

A. It was not raised or lowered twenty-five feet.

Q. What was its condition?

A. Well, the shove-down was back on a slant about around the first pile.

Q. About how far back was that pile from the pot?

A. I should say about ten or twelve feet.

Q. About how was it at the water line?

A. I couldn't say that, because I don't know.

Q. Did you notice the tunnel leading into the pot of that trap? A. That is, on No. 4?

Q. Yes. A. Well, I can't recall.

Q. Don't state anything you don't remember.

(Testimony of Harry Ward.)

A. Well, I can't recall it.

Q. Now, in No. 5 on the occasion of that trip, did you visit the trap of this company No. 5? A. Yes.

Q. Did you look at the webbing of the heart of that trap on each side of the heart next to the pot—did you see it? A. I did.

Q. What was its condition—that is, the condition of the twenty-five feet next to the pot on each side, that is, the webbing or net of that heart, with reference to being raised or lowered?

A. It wasn't raised or lowered twenty-five feet.
[210—84]

Q. What was the condition?

A. Well, it was about the same as the rest of those—the top of the short shove-down was around the first pile.

Q. A distance of about how many feet?

A. Well, ten or twelve feet, I should say.

Q. Did you notice how far it was open at the water-line?

A. I noticed at the time, but I can't remember now.

Q. Did you notice the tunnel of that trap No. 5? Did you see it?

A. I noticed the tunnel, but I can't recall exactly what was the condition.

Q. Now, did you visit trap No. 6 of this defendant company on the occasion of that trip? A. Yes.

Q. Did you look at and see the webbing of the heart on each side next to the pot of that trap?

A. No, I didn't.

Q. You didn't see that, didn't see No. 6 at all?

(Testimony of Harry Ward.)

A. I saw the trap. I got out and held the boat—it was a little bit rough at the time, but I didn't pay much attention to the trap on account of being pretty busy.

Q. Did you go on that trap?

A. I believe Mr. Walker did, if I am not mistaken.

Q. Did you observe the tunnel?

Mr. MUNLEY.—I think he probably didn't observe it at all.

Q. (By Mr. REAGAN.) Did you observe any part of the trap? A. No, I don't think I did.

Q. So you don't know anything about that trap at all. Next indictment—did you take a trip subsequently to these traps? A. Yes.

Q. What time?

A. I believe it was August 8th. [211—85]

Q. You started August 8th?

A. If August 8th was Saturday—we started in the afternoon, I know that.

Q. Do you remember on the occasion of that trip whether or not you visited trap No. 11 of this defendant company? A. We did.

Q. Do you remember what hour you arrived there?

A. It was in the evening—nine o'clock I should say. I have the exact date of that—no, on No. 11 I have not.

Q. At nine o'clock, the 8th, the day you started?

A. Yes, same evening.

Q. Did you look at the webbing of the heart of that trap so that you saw it? A. Yes.

Q. What was the condition of the webbing or net

(Testimony of Harry Ward.)

of the heart of that trap on each side next to the pot with reference to being lifted or lowered?

A. It was not lifted or lowered twenty-five feet.

Q. What was its condition?

A. Well, it was back around somewhere—the top shove-down was back about the first pile on No. 11.

Q. A distance of how long?

A. I should say it was ten or twelve feet.

Q. On the occasion of that trip, did you visit trap No. 12 of this defendant company? A. We did.

Q. About what time did you arrive there; do you remember?

A. About 8:40. I have the exact time of that; that is the only one I have put down.

Q. Of August 8th? A. Yes. [212—86]

Q. Did you look at and see the webbing on the heart of that trap next to the pot? A. I did.

Q. What was the condition of twenty-five feet of the webbing or net of the heart of that trap on each side next to the pot with reference to its being lifted or lowered at that time?

A. It was not lifted or lowered twenty-five feet.

Q. What was its condition?

A. Well, the shove-down pole was around the first pile, pretty near the top of it.

Q. And that would be about what distance back to the pile? A. Ten or twelve feet.

Q. About how much variance would there be?

A. Between the traps, you mean?

A. No, as to being—I understood you to say that

(Testimony of Harry Ward.)

there was a distance of about ten or twelve feet, but it would vary?

A. It would vary between ten and twelve feet, you know, maybe less and maybe a little more, I am not sure.

Q. Next indictment. Did you also on that trip visit trap No. 1 of this defendant company?

A. That is, August 9th?

Q. Yes.

A. That would be the same trip we visited eleven and twelve?

Q. On the same trip, yes.

A. We did.

Q. What time were you there?

A. It was early—I have notes to tell those.

Q. Where are they? A. In my pocket.

Q. Suppose you refresh your memory—Did you make those notes at the time?

A. I did. [213—87]

Q. Are they correct—were they correct at the time you made them?

I suppose they were correct. I made them from the time on the boat there.

Q. Well, go ahead and look at them.

A. Trap No. 1, did you say?

Q. Yes.

A. I haven't trap No. 1 here; I thought I did, but I haven't.

Q. You remember being there on the 9th of August, however? A. Yes, I was there.

Q. 1914, was it, this last August? A. Yes.

(Testimony of Harry Ward.)

Q. Did you look at the tunnel going into the pot of that trap so that you could see what condition it was in? A. No. 1?

Q. Yes, did you look at it—did you see it?

A. No, I can't recall absolutely.

Q. Did you look at the webbing or net of the heart of that one?

A. Well, I noticed that the heart walls—the opening was not back as it should be, twenty-five feet.

Q. About how far back was it?

A. The top of the shove-down was about ten or twelve feet. They were about all the same.

Q. When you say the top of the shove-down was back a distance of ten or twelve feet, where was the bottom of the shove-down?

A. I should judge—say on a slant lashed to the middle of the shove-down, because some of them you could see at low tide, the lashing.

Q. When you say the shove-down was open ten or twelve feet or whatever distance, how was the bottom of the shove-down in each of these cases—was it fastened? [214—88]

Mr. WINN.—He is examining him with regard to trap No. 1. I wish he would examine him regarding trap No. 1.

The COURT.—Yes. You mean trap No. 1?

Mr. REAGAN.—I am asking him about—

The COURT.—Read the question.

(Q. read by steneographer:) When you say the shove-down was open ten or twelve feet or whatever distance, how was the bottom of the shove-down in

(Testimony of Harry Ward.)

each of these cases—was it fastened?

Mr. WINN.—I object to it because he has gone over it. He has stated that he doesn't know as regards some and now he wants him to say this—

Mr. REAGAN.—I am asking him about the ones he has testified about. He testified the shove-down was so and so.

The COURT.—If his one answer refers to one trap, it is all right. If he answers as relating to all the traps he has testified to, the one answer would cover everything. If he doesn't answer with reference to all the traps he testified to, he must answer what traps it does refer to and what traps it doesn't.

Q. (By Mr. REAGAN.)—In the cases you have already testified to, where you have testified that the top of the shove-down was open a certain number of feet, in each of those cases, how was the bottom of the shove-down? A. It run to a slant—

Mr. WINN.—I object to the question before the answer, because he is repeating it now in each of these cases.

The COURT.—Objection overruled.

A. The bottom of the shove-down, I should say, the lashing come about low tide.

Q. (By Mr. REAGAN.) Low tide? [215—89]

A. Or a little below that.

Mr. WINN.—I object to that because he is saying all of these traps.

The COURT.—Now, gentlemen, if he can testify that what he testified to in relation to the shove-down relates to all traps he is testifying about, let him say

(Testimony of Harry Ward.)

so. If he doesn't say so, let him say which one it does refer to. That doesn't hurt any one.

Q. (By Mr. REAGAN.) Does the condition of the shove-down, as you have stated, relate to all the traps you have testified about, or does it relate to only some of them?

Mr. WINN.—I object to the question on the ground that it is incompetent, irrelevant, and immaterial, and there has been no foundation laid for the witness to answer the question.

The COURT.—Objection overruled.

Mr. WINN.—I objected to the other question because he has not laid a foundation pertaining to all these traps because he hasn't shown his knowledge of the tide. He guesses at low tide.

The COURT.—Read the question.

(Q. read by stenographer:) Q. In the cases you have already testified to, where you have testified that the top of the shove-down was open a certain number of feet, in each of those cases how was the bottom of the shove-down? A. It run to a slant— (Objection overruled.) A. The bottom of the shove-down I should say the lashing come about low tide. Q. Low tide. A. Or a little below that.

Mr. REAGAN.—I didn't say anything about the tide.

Mr. WINN.—Yes, you did.

The COURT.—Proceed. [216—90]

Q. (By Mr. REAGAN.) About how many feet would that be from the capping at the top of the piles; about how many feet would you say?

(Testimony of Harry Ward.)

A. I should say about twenty-five feet; maybe a little more than that.

Q. And each of these traps you testified to, was that the condition or wasn't that the condition?

A. That was the condition.

Q. In each case? A. In each case.

Q. Now, trap No. 1 on the 9th of August; did you testify how the webbing was in the heart walls of that trap, or haven't you testified?

A. On No. 1 the August trip?

Q. August trip; you testified you reached there the morning of August 9th? A. Yes.

Q. Have you testified as to what you found as to the condition of the heart walls or webbing of the heart walls of the trap next to the pot a distance of twenty-five feet? A. On No. 1?

Q. Yes. A. I think so.

Q. What did you say?

Mr. WINN.—I object to the question—he has gone over that once.

A. I testified, I think so.

The COURT.—Q. What did you say? Was it lowered or raised twenty-five feet?

A. Well, it wasn't.

The COURT.—Ask him another question.

Q. (By Mr. REAGAN.) What condition was it in? [217—91]

A. Well, about the same condition as the others.

Q. Did you visit trap No. 2 on that trip of this defendant company? A. Yes.

Q. Did you notice the tunnel leading into the pot

(Testimony of Harry Ward.)

of that trap? Did you look at it?

A. Well, I noticed it, but I don't recall any.

Q. Did you look at and observe the walls of the heart—the webbing or net of the heart of that trap on each side next to the pot—did you see it?

A. Yes.

Q. What was its condition as to being lifted or lowered twenty-five feet on each side next to the pot on that occasion,—was it or was it not?

A. It was not.

Q. What condition was it in?

A. Well, the shove-down was—the short shove-down was slanting back to about the first pile.

Q. And the bottom of the shove-down was where?

A. It was down twenty-five or thirty feet on the long shove-down.

Q. Attached to the long one?

A. Yes, I think it was lashed.

Q. Did you visit trap No. 3 of this defendant company on the occasion of that visit? A. Yes.

Q. What day was that?

A. August 9th, I think, six o'clock.

Q. With reference to six o'clock Saturday afternoon of the 8th and six o'clock Monday morning of the 10th, was it without or within those hours?

A. I don't understand the question. [218—92]

Q. At the time you visited this trap No. 3, was it or not between six o'clock Saturday afternoon of the 8th and Monday morning six o'clock of the 10th?

A. Why, sure it was in the closed season.

Q. Did you observe—did you look at the tunnel of

(Testimony of Harry Ward.)

that trap leading into the pot? A. At No. 3?

Q. Yes. A. I believe I did.

Q. Do you remember what condition it was in?

A. I think it was slacked away, but I don't think it was clear closed.

Q. Did you look at the webbing of the heart of that trap on each side next to the pot?

A. I noticed them, yes.

Q. With reference to that occasion during that closed season, what was the condition of the twenty-five feet of webbing or net of the heart of that trap as to being lifted or lowered twenty-five feet?

A. It was not lifted or lowered twenty-five feet.

Q. What was its condition?

A. The top of the short shove-down was down some way; some were closer than others and extended back a little further; but all around about the first pile.

Q. And the bottom of the short shove-down?

A. It was twenty-five or thirty feet down on the long shove-down. I never measured it, but I judged from how the tides are.

Q. Did you visit during that closed season trap No. 3-A of this defendant company? A. Yes.

Q. Did you observe the tunnel of that trap entering the pot?

A. I think I did observe the tunnel of that on 3-A.
[219—93]

Q. You did?

A. I am pretty sure, because I noticed it was a wire tunnel, if I am not mistaken.

(Testimony of Harry Ward.)

Q. What was its condition as to being opened or closed?

A. I don't think it was absolutely closed.

Q. Did you look at the webbing on each side of the heart on that trap for a distance of twenty-five feet of the pot—did you see it? A. Yes.

Q. What was the condition of the webbing or net of the heart of that trap on each side next to the pot, twenty-five feet thereof, with reference to being lifted or lowered at that time?

A. It was not lifted or lowered twenty-five feet.

Q. Did you on that visit during that closed season visit trap No. 4 of this defendant company?

A. Yes.

Q. Did you see the tunnel of that trap leading into the pot? A. Yes.

Q. What was its condition as to whether it was opened or closed at that time?

A. It was slacked away, but wasn't all closed.

Q. Did you look at and see the walls of the heart next to the pot of that trap at that time? A. Yes.

Q. What was the condition of twenty-five feet of the webbing or net of the heart of that trap on each side of the pot with reference to whether it was lifted or lowered?

A. It was not lifted or lowered twenty-five feet.

Q. Did you on that same occasion and during that same closed season visit trap No. 6 of this defendant company? A. Yes. [220—94]

Q. Did you look at and see the tunnel leading into the pot of that trap? A. Yes.

(Testimony of Harry Ward.)

Q. What was its condition as to being opened or closed? A. Tunnel opened about two feet.

Q. Did you look at and see the walls of that trap during that closed season? A. Yes.

Q. What was the condition of twenty-five feet of the webbing or net of the heart on each side next to the pot, for twenty-five feet thereof, on that occasion, with reference to being lifted or lowered?

A. It wasn't lifted or lowered twenty-five feet.

The COURT.—Q. When you say it wasn't lifted or lowered twenty-five feet, do you mean it wasn't lifted twenty-five feet from the ground?

A. I mean there wasn't twenty-five feet of an opening in the heart on the part next to the pot walls.

Q. You mean a space horizontally was not lifted or lowered?

A. There was a space that was not open twenty-five feet.

Q. (By Mr. REAGAN.) Right next to the pot?

A. Right next to the pot.

Q. In the heart? A. In the heart walls.

Q. Did you visit trap No. 9 during that same closed season on that trip? A. Yes, we visited it.

Q. Did you observe the tunnel of that trap at that time? A. No, I can't recall that I did.

Q. Did you look at and see the webbing on each side next to the pot? A. Yes. [221—95]

Q. Will you state what was the condition of twenty-five feet of the webbing or net of the heart of that trap with reference to its being lifted or lowered or otherwise opened?

(Testimony of Harry Ward.)

A. It was not lifted or lowered twenty-five feet back or otherwise opened.

(Whereupon Court adjourned until 2 P. M., the same day, when Court reconvened pursuant to adjournment, the jury and counsel being present.)

Cross-examination.

(By Mr. WINN.)

Q. What did you say your name is?

A. Harry Ward.

Q. Where do you live? A. Juneau.

Q. How long have you lived here?

A. It will be four years next August.

Q. What is your business?

A. Carpenter as a rule.

Q. How many times were you out for this fish commission? A. Three times, I believe.

Q. Three times—that was on the 9th of August, 12th of July—

A. There were several days in succession, but that was the time, around that.

Q. Do you have any objection to my seeing those notes you testified from this morning? A. No.

Q. Did you make these at the request of Walker?

A. I did.

Q. You made them while you were at the trap?

A. I did. [222—96]

Q. You made them while you were at the respective traps that they refer to? A. Yes.

Q. These notes that you have pertain to how many of the traps?

A. There are some of them that aren't there; some

(Testimony of Harry Ward.)

are there—I lost a few of the notes.

Q. Now, you have testified concerning—I think you testified as being with them and, of course, if you want to refresh your memory from your notes, you may do so,—I want to see how many of these traps—see if I am right about them. The first series of questions put to you by the District Attorney was about the 12th day of July, 1914, about being at trap No. 1 of the Thlinket Packing Company. You were at that trap, were you?

A. On the 12th of July, yes.

Q. On Sunday, July 12th, you were at that trap?

A. Yes, sir.

Q. Then the next place is on the same date; you were at trap No. 2 of that company? A. Yes.

Q. And then on the same date you were at trap No. 3? A. Yes.

Q. On the same day you were at trap No. 4?

A. Yes.

Q. On the same day you were at trap No. 5?

A. Yes.

Q. On the same day you were at trap No. 6?

A. Yes.

Q. Now, that series you were there. Now, the next one is on August 8th; the first count here makes a complaint about trap No. 11; you were at that trap on August 8th. On the same date you were at trap No. 12? [223—97] A. Yes.

Q. Then on the same date in August, that is, between August 8th and 9th, you were at trap No. 1 of this company—that was in August? A. Yes.

(Testimony of Harry Ward.)

Q. And then on the same date you were at trap No. 2 of this same company? A. Yes, sir.

Q. Between those said dates. Then you were at trap No. 3? A. Yes.

Q. And trap No. 3—A of this company? A. Yes.

Q. And also trap No. 4? A. Yes.

Q. And trap No. 6 and T. P. Co.'s No. 9?

A. Yes.

Q. All between these dates. You were engineer on this gasoline launch, were you? A. Yes, sir.

Q. Now, I will ask you if on those same dates you went to any other traps? A. We did.

Q. On that same date, on August 12th, you went to one of the Pacific American Fisheries Company's traps?

Mr. REAGAN.—I object to the question on the ground that it is not involved in this case at all.

The COURT.—I don't know whether it is or not. I cannot tell from that question.

Mr. REAGAN.—It is not cross-examination.

The COURT.—It might be. I cannot tell what it is leading up to. Objection overruled. Answer the question. [224—98]

Q. (By Mr. WINN.) On July 12th, between the same dates, July 11th and 12th, you went to the Pacific American trap No. 2, didn't you?

A. P. A. F.?

Q. Yes.

A. Well, I don't know just where that is situated right now?

Q. Well, you went to a number of the Pacific

(Testimony of Harry Ward.)

American Fish Company's traps that day, didn't you? A. We passed several of those traps.

Q. You stopped and examined those with this same man, the fish commissioner? A. Yes, sir.

Q. You know you were at the Pacific American Fisheries trap No. 2 on that same day?

A. I wouldn't say I was, because I don't know where it is situated just now.

Q. Did you take any notes on those traps?

A. Yes, I did,—the same particular notes I did on these other traps.

Q. But you wouldn't know whether you were on one of the Pacific American Fisheries traps unless you had your notes?

A. Yes; I told you I was on some of those traps; if I knew where they were situated, I could tell where I was at.

Q. Would your notes tell whether you were at the Pacific American Fisheries traps that date?

A. I don't know whether I have those notes or not. I can look and find out.

Q. Well, did you visit also with this same fish company, the Pacific American Fisheries Company, No. 3 trap,—you visited two of the P. A. F. traps on that date? A. Yes.

Q. Didn't you visit number—didn't you visit P. A. F. No. 4 on [225—99] that date too?

A. Just wait a minute. I think I have some notes on that. A. P. F. No. 4, yes.

Q. P. A. F.; what have you got? A. A. P. F.

Q. Alaska Puget Sound?

(Testimony of Harry Ward.)

Mr. REAGAN.—Alaska Pacific.

Mr. MUNLEY.—Astoria & Puget Sound.

Q. (By Mr. WINN.) You were at one of those on the same date too. Now, weren't you at P. A. F. No. 4 that day? A. I think so, yes.

Q. And at P. A. F. No. 5; you were at five traps of the Pacific American Fisheries on that date, weren't you, between the eleventh and twelfth?

A. We were at more than that, I think.

Q. More than the Pacific American Fisheries?

A. I think we covered all of them in that territory out there; I am not sure.

Q. Also, were you at the P. A. F. No. 6, marked P. A. F. No. 7, No. 9, No. 10 and No. 12?

A. I think we covered all those, yes.

Q. If Walker was there you were there?

A. I was.

Q. Now, on the 9th of August, being one of the dates that you have testified concerning the Thlinket Packing Company's traps, I will ask you if you weren't at trap No. 2 of the Pacific American Fisheries on that day too—Pacific American Fisheries?

A. I think so.

Q. And P. A. F. No. 3,—if Walker was there you were there? A. Yes.

Q. And P. A. F. No. 4? A. Yes. [226—100]

Q. And P. A. F. No. 5? A. Yes.

Q. And No. 6, No. 9, No. 10, No. 11 and No. 13; you were at all those traps on that date, August?

A. Yes.

Q. Now, here is one you mentioned a while ago,

(Testimony of Harry Ward.)

Astoria & Puget Sound Canning Co.; on July 12th, this same day, you testify concerning the Thlinket Packing Company's traps, between the eleventh and twelfth, you were at the Astoria & Puget Sound trap No. 3, weren't you, and the same company No. 5?

A. Yes.

Q. Now, the Glacier Fisheries Company; you were along with the fish commissioner when he was out there too, weren't you? A. I was.

Q. On July 12th, between the 11th and 12th, between one of the same days you testified concerning the Thlinket Packing Company, you were at the Glacier Fisheries Company's No. 4, weren't you; and on the same date, July, between those same dates, you were at that company's trap No. 6? A. Yes.

Q. Now, on the next day, between the eighth and ninth of August, you were at the Glacier Fisheries Company trap No. 6, weren't you, in August—those others were in July?

A. Between the 8th and 9th of August?

Q. Yes, the same dates as the Thlinket Packing Company, between the 8th and 9th?

A. In the closed season, yes. I don't know whether it was between the 8th and 9th or not.

Q. You were there on Sunday the 9th? A. Yes.

Q. And on Sunday the 9th you were at this Glacier Fisheries Company No. 3 trap, weren't you? [227—101] A. Yes.

Q. And also on the same date you were at the same company's trap No. 7? A. Yes.

Q. And also the Glacier Fisheries trap No. 9?

(Testimony of Harry Ward.)

A. Yes.

Q. The same company's No. 10? A. Yes.

Q. How fast does your boat run?

A. Well, I should say about—pretty close to eight knots.

Q. Between these two dates, in August, as I have mentioned to you, and the dates you mentioned in July, you took in that whole scope of country with this fish commissioner and examined all those traps, didn't you? A. Yes.

Q. Do you know about how much ground you covered on each one of those trips?

A. Well, I know the territory we covered, but I don't know how much ground we covered, but I could almost outline—

Q. If you had a map?

A. Yes. I could outline the directions we took.

Q. You wouldn't have any judgment as to the number of miles you covered approximately? Say the fish-traps in July, on the 12th I believe those indictments are—between the Saturday and Sunday?

A. And the Monday morning?

Q. Between the Saturday evening that you have examined your first trap up to Monday morning?

A. I should say close to two hundred miles, somewhere around there.

Mr. REAGAN.—We can get the exact mileage for you, if you want it, Mr. Winn. [228—102]

Mr. WINN.—Thank you.

Q. How many traps of this Thlinket Packing Company were you upon; that is, out of your boat and on it?

(Testimony of Harry Ward.)

A. Well, I was on No. 11 and No. 12.

Q. On No. 11 and No. 12. What part of those traps were you on? A. Well, I was up on top.

Q. What part of the trap? A. What part?

Q. Yes, what part?

A. I went all around, went around the pot, went around the spiller, and out around the heart as far as I could get.

Q. No. 11? A. Yes.

Q. No. 12, were you on top of that one? A. Yes.

Q. They were all of the Thlinket Packing Company's traps you were on during those two rounds out in the gas boat? A. I think so.

Q. Mr. Walker took you and Mr. Neville along to be witnesses in the case, did he?

A. Why, we were to run the boat, but we were supposed to take notes of what we saw.

Q. Did he mention that before you got out there or before you got out to the fish-traps?

A. He mentioned it to us before we started.

Q. You and Neville were to go along and go in the capacity of engineer and the other as captain of the boat, and also to serve in the capacity of witnesses? Did he tell you what he wanted you as witnesses for?

A. He didn't say, but I supposed he wanted us for witnesses, nothing else.

Q. On the trial of some case he proposed to bring?
[229—103]

A. I didn't know whether it was going to be tried or not.

(Testimony of Harry Ward.)

Q. You knew you couldn't be a witness unless there was a trial, didn't you?

A. I wouldn't think so.

Q. You never was a witness unless there was a trial on, were you?

A. Yes; a witness may be a witness to things. You don't have to be on the witness-stand to be a witness to things.

Q. You mean witnesses to a paper. If they are testifying it is upon the trial, isn't it?

Q. Generally, yes.

Q. Did you say that all of these pull-back sticks, or closing sticks, on both sides of the traps in those traps you testified concerning this morning were tied and made fast to the first pile?

A. I said the shove-down.

Q. Well, we call it the pull-back stick, or shove-down; you call it the shove-down. You said it was made fast to the first pile, did you?

A. I didn't; I said it was made fast to the long shove-down.

Q. You didn't testify—I understand that now. Then when it was pulled back, did you testify what it was made fast to?

A. I don't know whether it was made fast—it was tied—you mean the top of the shove-down?

Q. Yes.

A. Well, it was made fast in some fashion.

Q. You don't remember what fashion?

A. I think it was tied.

Q. You think it was tied?

(Testimony of Harry Ward.)

A. I think there was a cleat to tie it on where it was tied.

Q. Did you see any ones that were floating in the water—pulled clear back until they floated in the water and lifted in that shape—any of these pull-back sticks or shove-downs or [230—104] close-downs. (Indicating.)

A. I don't remember of any.

Q. Did you hear Neville testify this morning?

A. I did.

Q. Did you hear him testify that some of them were floating in the water?

A. I don't remember as I did.

Q. Well, if he testified to it, you wouldn't want to contradict it, would you, that some of them were floating in the water?

A. If I didn't see it, I wouldn't say I did.

Q. You don't remember yourself of seeing any floating in the water? A. I said I didn't.

Q. And you intended to testify this morning in answer to the prosecuting attorney's question that they were fastened all alike—that is, you meant the closing stick was made fast to the long shove-down on either side or both sides of the trap—they were all made fast the same way? A. Yes.

Mr. WINN.—That is all.

Redirect Examination.

(By Mr. REAGAN.)

Q. Mr. Ward, I want to be sure and understand you right. The shove-down stick that opened that webbing partially, the upper end loose, and was that

(Testimony of Harry Ward.)

upper end fastened anywhere, or was it just pulled back?

Mr. WINN.—He answered it on direct examination. He explained the whole situation.

Mr. REAGAN.—He didn't answer it at all.

Mr. WINN.—And in the cross-examination. [231—105]

Mr. REAGAN.—I don't understand what he is saying—whether before it was opened or after it was opened.

The COURT.—Very well, answer the question.

A. It was fastened at the top.

Q. After it was opened?

A. When I saw them, the shove-down was fastened at the top in or about the first pile at the top cleat—the top of the shove-down.

Mr. REAGAN.—That is all.

Recross-examination.

(By Mr. WINN.)

Q. You didn't see any of those that were floating in the water and pushed clear back—you didn't see any of those, did you?

Mr. REAGAN.—I object to that; he has already answered it.

The COURT.—He may answer it again.

A. I said that I did not.

Q. (By Mr. WINN.) Then you wouldn't want to swear that all of those pull-downs were fastened to the first pile that you saw on the defendant company's traps that day?

A. I couldn't swear that all of them were tied that

(Testimony of Harry Ward.)

way. I wouldn't swear they were all tied that way.

Mr. WINN.—That is all.

(Witness excused.) [232—106]

[**Testimony of J. W. Bell, for Plaintiff.**]

J. W. BELL, a witness called and sworn in behalf of the United States, testified as follows:

Direct Examination.

(By Mr. REAGAN.)

Q. Will you state your full name, Mr. Bell?

A. J. W. Bell.

Q. What position, if any, do you hold at present?

A. Clerk of the District Court, First Division of Alaska.

Q. As such have you charge of the records and files filed with the clerk of the court?

A. Yes, sir.

Q. Have you in your records copies or certified copies, or whatever the law requires, of the articles of incorporation of the Thlinket Packing Co.?

A. Yes, sir.

Q. Will you produce them, please?

Mr. WINN.—I don't care to burden the record; we will admit that the Thlinket Packing Company is a corporation.

The COURT.—And was at the time of these indictments and at the times of these alleged violations?

Mr. WINN.—Yes, sir.

Mr. REAGAN.—That is all.

(Witness excused.) [233—107]

Mr. REAGAN.—I would like to introduce a calen-

(Testimony of J. W. Bell.)

dar for the purpose of showing the dates.

The COURT.—Very well; produce a calendar.

Mr. REAGAN.—I offer in evidence a calendar for the year 1914, showing the dates.

The COURT.—Any objection?

Mr. WINN.—No, sir.

(Admitted in evidence and marked Plaintiff's Exhibit "B.")

Mr. REAGAN.—We offer the fish-trap in evidence for the purpose of illustration.

The COURT.—Do you offer it in evidence?

Mr. REAGAN.—It has already been introduced for the purpose of illustration, if the Court please.

The COURT.—It hasn't been introduced in evidence, has it?

Mr. REAGAN.—Yes, sir, for the purpose of illustrating.

The COURT.—How can you introduce it in evidence for the purpose of illustrating without offering it in evidence?

Mr. REAGAN.—I offer it in evidence in the case.

The COURT.—Any objection?

Mr. WINN.—Yes, sir, the same objection made before—incompetent, irrelevant, and immaterial, and it has not been proven to have been made by any one who understood the construction of a fish-trap, foundation, etc.

The COURT.—Objection overruled.

(Admitted in evidence and marked Plaintiff's Exhibit "C.")

Mr. REAGAN.—The calendar, gentlemen, shows

that the eighth day of August was Saturday, Sunday was the ninth, Monday was the 10th—the closed season beginning at six [234—108] o'clock P. M. the eighth, and ending at six o'clock A. M. on the tenth. In July, the eleventh was Saturday, twelfth Sunday, and thirteenth Monday—the closed season beginning at six o'clock P. M. the eleventh, and ending at six o'clock A. M. the thirteenth. We rest, if the Court please.

(Whereupon the jury was excused from the courtroom for a few minutes, while the following motion was made.)

Mr. WINN.—Come now M. G. Munley and Winn & Burton, attorneys for the Thlinket Packing Company, a corporation, in the three indictments in this court against the said Thlinket Packing Company, to wit: Indictments Nos. 1034-B, 1035-B, and 1036-B, and attorneys for said company in all the counts in each and all of those indictments, and move the Court to direct the jury to bring in a verdict in favor of the Thlinket Packing Company, or to dismiss the proceedings for want of evidence to establish each and all of the counts, or any of the counts, set out in the three indictments above mentioned, upon the following grounds and for the following reasons: First, that each several indictment and every count therein does not charge the offense defined and set out in the statute; that each several indictment and every count thereof fails to charge that the defendant did unlawfully fish for, take, or kill salmon of any species.

Second. That there is no evidence to establish such fact in the case; that each and all of the several indictments, and each count thereof, did not allege that the defendant failed to close the gate, mouth, or tunnel, or raise or lower the heart next to the pot in a trap that is designed and used by the defendant to fish for, take, or kill salmon of any species, and that there is no evidence in the case to establish [235—109] such fact.

Third. That each of the several indictments and every count therein does not set forth the facts constituting the alleged offense in such manner as to apprise the defendant of the nature of the charge of which he is called upon to defend.

Fourth. That each several indictment, and every count thereof, fails to allege that the said alleged fishing was done during the closed season.

Fifth. That each several indictment and every count thereof does not allege or set out any particulars or facts as to the closing of the tunnels or the facts with regard to the raising or lowering of the webbing of the heart next to the pot in such manner as to prevent the free passage of salmon in such a way as to embrace every element of the offense defined by the statute.

Sixth. That each several indictment and every count thereof fails to allege that the locality where such fishing was done was not in the district or place excepted from the statute; that is, it was not in Cook's Inlet, the Delta of the Copper River, Bering Sea, or waters tributary thereto, or that it was not with one of the excepted forms of gear, viz.: rod,

spear, or gaff, and that there is no evidence now before the jury to show as to whether or not, if any crime was committed, that it was committed within the prohibited districts of the waters of Alaska as defined by the section under which the indictments are made.

Seventh. That each several indictment and every count thereof fails to charge the offense denounced by the statute in such a manner as to enable a person of common understanding to know what is intended, and the offense is not alleged with such a degree of certainty as to enable the [236—110] Court to pronounce judgment in case of conviction according to the right of the case.

Eighth. That there is no evidence in the case on the part of the Government to disprove the fact or to show as to whether or not the way the respective traps were opened that there could or could not be a free passage of salmon and other fishes, counsel for the defendant company claiming that the reasonable construction of the statute is that if the trap was open in such a way so that it did not prevent the free passage of salmon and other fishes, then the spirit of the statute is complied with; that the only thing the statute is intended to prohibit is the free running of salmon and other fishes, and that is an element which it is incumbent upon the Government to establish before it can establish any charge against the defendant company.

The COURT.—The motion will be denied.

Mr. WINN.—I suppose any ruling you make, exceptions are considered to be made?

(Testimony of Robert Forbes.)

The COURT.—Certainly—the statute provides that.

(Whereupon the Court took a short recess, after which, the Court, jury, and all counsel being present, the following proceedings were had. [237—111])

[Testimony of Robert Forbes, for Plaintiff.]

ROBERT FORBES, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. WINN.)

Q. Mr. Forbes, what is your business?

A. Canneryman.

Q. How long have you been engaged in that business? A. Twenty-seven years.

Q. Have you been engaged in that business in Alaska?

A. That is, the fish business and canning business together.

Q. Both on Puget Sound and in Alaskan waters?

A. Yes, sir.

Q. Are you at the head or superintendent, general manager, or what is it?

A. I am general manager of the Pacific American Fisheries' business in Alaska.

Q. In Southeastern Alaska they have one cannery at Excursion Inlet? A. Yes, sir.

Q. And some canneries further up the shore?

A. Yes, sir.

Q. Have you ever had any experience in the trap business?

(Testimony of Robert Forbes.)

A. Yes, sir, I have since I have been in the business.

Q. You have quite a number of traps in Alaska now? A. Yes, sir.

Q. Did you ever operate any traps on Puget Sound? A. Yes, sir.

Q. Now, Mr. Forbes, during this experience of yours, extending over these many years, have you at various times observed the [238—112] habits of salmon when they first find that they are in any way hampered from entering the different parts of what constitutes a fish-trap? A. Yes, sir.

Q. I wish you would explain the habits of the salmon as far as you have been able to observe it upon their first entering the heart of the trap, and tell upon what tides you fish, etc.

A. Well, as a rule, the trap fishes at its best on the flood tide. The fish come in the heart, strike the lead, follow the lead till they strike the heart, then they find it enclosed and they work their way around the heart to the tunnel which enters the pot.

Q. Now, have you observed their habits about entering these pots—do they go in immediately, in herds, or what is the habit of them—do they do anything? What is the action of them around in the heart?

A. They swim around—as a rule they do not enter the pot when they first come in the heart, but they will swim around the edges of the heart and approach the tunnel and turn and go away again, and sometimes they will approach the tunnel a dozen

(Testimony of Robert Forbes.)

times before they enter the pot—before they enter the tunnel. When one starts there may be what we term a school and maybe a part of the school will enter and part of the school will reverse itself and swing back. Maybe when the whole school starts they will all follow into the pot.

Q. I will ask you as a practical fisherman—I will withdraw that. Did you hear the testimony of Mr. Walker this morning, the fish commissioner,—particularly that portion of his testimony wherein he stated that the fish were practically caught when they are in the heart of the trap?

A. Yes, sir. [239—113]

Q. Now, I will ask you whether or not from the standpoint of a practical fisherman and what you have observed of fish—whether or not that is the case or not?

A. I don't think they are practically caught until they are in the scow.

Q. And you have taken them out of the spiller and put them in the scow? A. Yes, sir.

Q. Now, I will ask you, Mr. Forbes, in your observation of these traps also, if you have ever noticed them pass in any numbers, say from the spiller back into the heart and from the heart into the pot, and then out of the heart back into the pot?

A. Yes, sir, frequently.

Q. How is their action compared with any other caged animal?

A. I don't know. I know this, that when a fish finds himself in the pot, at first he works up against

(Testimony of Robert Forbes.)

the tide as a rule as it ebbs or runs against the trap, and after a while he comes to the conclusion that he can't get out that way and is corralled and then he is not so wild and very often when the tide changes, they will reverse themselves and go from the spiller back into the pot. Very frequently before the tide changes, when the fish are entering the spiller—to hold them, you will close the tunnel to prevent them from returning to the pot. The same thing applies to them leaving the hearts. I have often laid on the capping across in front of the heart and watched the action of the salmon going in and out of the pot and back into the pot and out again.

Q. Well, in that case I will ask you, Mr. Forbes, would it be good fishing or practical fishing to leave the tunnel that leads from the pot into the heart open while the web of the heart is down? [240—114]

Mr. REAGAN.—I object to the question on the ground that it is incompetent and immaterial.

Mr. WINN.—There has been some testimony on it. They claim we were leaving the tunnel open and also that testimony as to how much we had pushed down on the side. I simply want to show that there is no fishing of that kind. I think it discredits their evidence.

Mr. REAGAN.—It doesn't make any difference. The law requires them to do that very thing. He asks if that is practical or is it possible. The jury will pass on that—it is immaterial.

The COURT.—How is that material?

(Testimony of Robert Forbes.)

Mr. WINN.—Walker went into this matter and explained the habits of fish. I presume it would be a conclusion. I don't care about it particularly.

The COURT.—Very well; ask another question, then.

Q. (By Mr. MUNLEY.) Mr. Forbes, will you describe the action of the salmon when he approaches an obstacle in his way like the lead of a trap?

Mr. REAGAN.—I object to that as being incompetent and immaterial.

Q. (By Mr. MUNLEY.) Is it different from its action when he gets into the heart and does it differ from his action when he gets into the pot?

Mr. REAGAN.—I object to that.

The COURT.—I think the defendant may develop its theory, Mr. Reagan. Objection overruled.

A. When he strikes the lead he is following the—he is practically on his way to his spawning ground and he may follow the lead at first and may go inshore and may back-track [241—115] a little bit and follow the lead again until he finally works himself into the heart.

Q. Does he stay in there when he gets in, always?

A. No.

Mr. REAGAN.—I object to that.

Q. (By Mr. MUNLEY.) What is the fact as to his going in and if there is any material from preventing him from going away or going out?

Mr. REAGAN.—I object to that.

The COURT.—According to your own theory of the case, I suppose it isn't competent to know what

(Testimony of Robert Forbes.)

a fish does when he gets into the heart. Objection overruled.

A. When a fish gets into the heart, as a rule, when a heavy tide is running, he will buck the tide and as a rule he will—he is just as liable to go outside as he is inside.

Q. (By Mr. MUNLEY.) Isn't he rather a wary animal and does he go right up to the web, or what is the fact? Is he afraid to approach the web?

Mr. REAGAN.—I object to the question as leading.

The COURT.—Change the form.

Q. (By Mr. MUNLEY.) What is the fact as to the habits when they get into the trap in regard to approaching the web—do they approach it readily or otherwise?

A. It depends; my experience has been that it depends altogether on the tidal conditions.

Q. Doesn't he become wary or otherwise when he enters the traps?

A. He does at first, but after he has been in a while and finds himself confined, he is not so much so, and will work around the trap and when the tide slacks up. He doesn't always confine himself to the contour of the trap—of the heart.

Q. Does he always enter the pot through the tunnel when he gets into the trap? [242—116]

A. No, he doesn't; they certainly do not enter the pot. They come into the heart.

Q. After they reach the heart do they always go into the pot? A. No, sir.

(Testimony of Robert Forbes.)

Q. Do they always go into the tunnel?

A. They do not.

Q. Have you observed salmon frequently steady then awhile after move about the trap?

A. I have.

Q. Have you seen the salmon go into the pot—go through the tunnel, and fully observe his action?

A. Yes, sir; I have watched them go into the tunnel—I have watched them approach the tunnel and go away two or three times and approach it again. I have seen the fish go into the pot and I have watched fish that were marked, that is, had been caught by a seine or line and they had been marked so you could trace them around in the pot, and I have watched them go back and forth.

Q. If the tunnel were pulled aside, even if it were not wholly pulled aside, would the fish enter, in your experience?

Mr. REAGAN.—I object to the question as leading.

The COURT.—It is rather leading; change the form.

Q. (By Mr. MUNLEY.) From your experience as a trapman, when a tunnel is pulled aside to some extent or any extent, does the fish freely enter or otherwise?

Q. You mean when the tunnel is closed?

Q. No, not entirely closed, but simply partially closed.

A. No, I don't think they would enter the small hole partially closed. They are very wary about

(Testimony of Robert Forbes.)

taking the large entrance to the tunnel. That is why it is in V-shape. [243—117]

Q. How wide is the tunnel at the mouth?

A. At which?

Q. At the outer end?

A. It is from ten to twelve feet.

Q. And how wide on the inside?

A. They vary according to the usages of the man who is working it, from six inches to a foot.

Q. You heard some testimony given by the witness Walker as to the opening of the tunnel on the spiller side, where he stated that it was eighteen inches—just as wide as it is going into the pot; is that so—is that a fact?

A. No; we shortened them up very short, six or eight inches. We do that to prevent the fish from returning to the pot.

Q. And what are the habits of salmon as to whether or not they are like some other animal, some other wild animal? Do they follow the leader?

Mr. REAGAN.—I object to the question as leading.

The COURT.—Yes, it is leading, but I don't see any harm in such a question as that.

A. As a rule they follow. In fact, a dog salmon will not trap without some other species to lead it.

Q. (By Mr. MUNLEY.) Isn't that also true of the coho salmon to some extent?

A. No, I don't know that it is so.

Q. How about the king salmon?

A. Well, the king salmon will trap by himself.

(Testimony of Robert Forbes.)

Q. He is a pretty wary salmon also, is he not?

A. Yes.

Q. What width of the opening of the heart next to the pot would permit the free passage of salmon or other fishes in your judgment? [244—118]

Mr. REAGAN.—I object to the question as being entirely improper and entirely contrary to the law. The law says what width must be open.

The COURT.—Objection overruled. I can cover the matter by my instructions to the jury, when I make up my mind how to instruct.

A. I should think two or three feet would certainly be clear track for salmon without any question.

Q. (By Mr. MUNLEY.) And afford free passage for every salmon?

A. Under certain conditions, as I said a while ago, especially when the tide is running. They work around the edges of it, consequently, if they go to this hole they go out.

Mr. MUNLEY.—That is all.

Cross-examination.

(By Mr. FOLSOM.)

Q. After all is said and done, the fish-trap is a pretty effective means of catching fish?

A. Under certain conditions.

Q. Answer the question.

A. Yes; if it wasn't, we wouldn't have them.

Mr. FOLSOM.—That is all.

(Testimony of Robert Forbes.)

Redirect Examination.

(By Mr. MUNLEY.)

Q. Is it possible to catch fish in certain parts of Alaska without a trap?

A. Very few; not in commercial quantities. [245—119]

(By the COURT.)

Q. Mr. Forbes, the leader of the fish is leading them from the heart into the tunnel; then the fish won't go out that space in the heart, will he?

A. How is that?

Q. I understood you to say that the fish follow their leader? A. Very often.

Q. If the leader is leading them from the heart into the tunnel, they won't go out the space between the heart wall, will they?

A. As they approach, like any thing else, as they would approach the tunnel, there will be quite a few that will follow them and the others will break and go off—they won't all follow in at one time.

Q. Some will go in the tunnel and some will go out the space?

A. I don't know that, because I have never watched them when the tunnel was set and the hearts were opened, Judge.

(By Mr. MUNLEY.)

Q. Would it be safe practice to leave the tunnel open if the walls of the heart were down?

A. I wouldn't think so.

Q. Wouldn't it give an opportunity for the fish in the whole trap to come out?

(Testimony of Robert Forbes.)

A. It would give you an opportunity to lose a great many of them. There is no question about it.

Q. Would it be good policy for a trapman to do so? A. I shouldn't think so.

Mr. MUNLEY.—That is all.

(Witness excused.) [246—120]

[Testimony of T. P. Keegan, for Plaintiff.]

T. P. KEEGAN, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. MUNLEY.)

Q. Your name is T. P. Keegan? A. Yes.

Q. What has been your business?

A. Well, up to this year the canning fish industry.

Q. How long have you been connected with the fishing industry?

A. Since seventy-six—thirty-eight years.

Q. What experience have you had—your experience in what parts of the Pacific Coast?

A. On the Columbia River and Alaska.

Q. Have you had any experience with traps?

A. Yes, in Southeastern Alaska.

Q. Fishing for salmon with traps? A. Yes.

Q. And during that long experience—Are you connected at this time with any fishing industry?

A. No, sir.

Q. Any company?

A. No, sir, I am out of the business altogether.

Q. Now, from your experience in the fishing business you became somewhat acquainted, have you not,

(Testimony of T. P. Keegan.)

with the habits of the salmon? A. Yes.

Q. How many species of salmon are there, Mr. Keegan?

A. Well, we have here for commercial purposes five.

Q. Do you know the habits—

A. That is, not counting the steelhead as a salmon.
[247—121]

Q. You have had experience in trapping those five species of salmon? A. Yes.

Q. What is the natural disposition of the salmon when they approach an obstacle as they are on the way to the spawning grounds—an obstacle of the nature of a trap lead?

A. Well, in slack water they work away from it, but if the current is strong, they work against the current, but in slack water or muddy water they will work away from it.

Q. What is the *modus operandi*, if you will explain it to the jury, from the time he first meets the first obstacle until he gets in the heart and from there to the pot; will you describe it so the jury will understand it?

A. Well, striking the lead, it all depends if they are coming in from open water, and striking the lead they will keep on ahead in until they get in shallow water, then probably turn about, follow that lead, likely following into the opening entering into the heart. If the tide is slack, that is, no tide, no current, they will probably play around in the heart, very often turn around and go out again. If the

(Testimony of T. P. Keegan.)

tide is strong, they will work against the web—against the current—work around—and likely work out to the entrance of the tunnel, work in through the tunnel into the pot. In the pot they then, if the tide is still strong—current strong—will work against the tide—against the webbing.

Q. Why do they do that?

A. Well, as far as my idea is, it is their nature to work against it.

Q. Has that any relation to their escape?

A. They will work endeavoring to escape.

Q. Endeavoring to escape?

A. Yes. [248—122]

Q. How wide is the opening usually of traps in the heart?

Mr. FOLSOM.—I object to the question on the ground that it is incompetent, irrelevant, and immaterial. The question is, what are these traps in question.

The COURT.—Objection overruled.

A. It all depends on the idea of the trap operator—from ten to twelve feet, some places eight feet. I have put in some traps myself that had about eight feet.

Q. (By Mr. MUNLEY.) It wasn't a large size trap? A. Yes.

Q. It depends on the size of the trap?

A. Yes, and length of the leads.

Q. What is the purpose of the thing known as the jigger?

A. The jigger will occasionally—fish going along

(Testimony of T. P. Keegan.)

the lead, if they fail to enter the heart, they will work out and strike the jigger and it will cause them to turn and go in again and following along the lead and go into the heart.

Q. Will you explain that—its whereabouts? Assuming this to be the lead, this the heart, this the opening, what would be the jigger? (Indicating.) What would be the jigger and state what constitutes a jigger?

A. The jigger is a row of piles driven with a hook around the end. You drive a row of piling from about here right out, and then you drive a hook around them with piling. Then they wrap the wire netting or webbing around that. That serves as a jigger. (Indicating.)

Q. Would there be any purpose in having the jigger if they always stay in the heart? A. No.

Q. And, as a matter of fact, they don't always stay in the heart? A. No.

Q. As a matter of fact, don't they go in and out a great many [249—123] times before they get in there? A. Yes, a great deal.

Q. Does a trap with a jigger fish better than a trap without a jigger?

A. A trap with a jigger fishes better.

Q. Why?

A. Because when they strike this hook—

Q. By hook, you mean piling?

A. Yes; they strike in towards the lead back into the heart again.

Q. Now, Mr. Keegan, you have told the jury the

(Testimony of T. P. Keegan.)

habits of the salmon fish when he gets into the heart. If the natural tendency is for a salmon to go forward and go along the lead and back again if he is turned by the jigger—if the heart were opened next to the pot to any extent, what would be the effect?

A. The salmon would go out through that opening.

Q. Would he be obstructed in any way there?

A. No.

Q. If there would be no jigger, there would be nothing? A. No.

Q. He would go on his way to the sea?

A. Yes.

Q. From your experience as a trapman and fisherman, what width of opening in the trap would be sufficient to permit a salmon to go through?

Mr. REAGAN.—I object to that as being incompetent, irrelevant, and immaterial.

The COURT.—Objection overruled.

A. Three, four, or five feet—such as that. That would be ample space. [250—124]

Q. (By Mr. MUNLEY.) Have you ever noticed a salmon escape in a very small space?

A. I have noticed a salmon go back through the tunnel in the pot out in the heart.

Q. Have you ever noticed—observed his action when caught? A. They are very wild.

Q. Isn't it a fact that even when the tunnel is only partially turned that they will find the trap empty immediately—not immediately, but as—

A. I didn't understand the question.

(Testimony of T. P. Keegan.)

Q. Isn't it a fact that if a portion of the tunnel were open or all open and the hearts were open next to the pot, would it be a safe proposition to keep the tunnel open?

A. No; there is—very often the tunnel has to be closed when they are in fishing condition, when fish are in the pot. At certain stages of the tide that tunnel must be closed during the fishing days of the week; if not, you will lose a great many of the fish out. I have had that experience myself.

Q. Then these changes occur very frequently?

A. Every six hours.

Q. If a trap were opened in such manner next to the pot as to allow the free passage of salmon, and the tunnel were also open, what would be the result?

A. A great many fish would get out of the pot.

Q. Coming to the spiller—if the tunnel was opened and the web was opened to such an extent that salmon could pass freely, would it affect all of the different impounding devices?

A. They would escape out of the spiller as well as out of the pot at certain stages of the tide. [251—125]

Q. Their tendency as wild animals is to escape?

A. Escape, yes.

Mr. MUNLEY.—That is all.

Cross-examination.

(By Mr. FOLSOM.)

Q. Do you know anything about the defendant's traps? A. No, I do not.

Q. You don't know how they are constructed?

(Testimony of T. P. Keegan.)

A. No.

Q. Did you ever watch traps during the closed season—fish traps?

A. Do you mean during the closed hours?

Q. Yes.

A. In what way?

Q. To watch the effect.

A. No; only with my experience wherever I have been the tunnel was always closed.

Q. You never watched the heart?

A. Yes; last year I had experience; that is, I noticed it last year in Icy Straits.

Q. Taking it altogether, a fish-trap is pretty effective, isn't it? A. Yes.

Q. You don't know whether the defendant has jiggers on their traps or not? A. No, I do not.

Q. There is a considerable difference of opinion as to the efficacy of jiggers among the cannerymen?

A. I don't believe much among cannerymen, but there is among other branches of fishermen like gillmen; of course, they don't like to see jiggers on the traps. [252—126]

Q. The purpose of traps is to catch fish?

A. Yes.

Q. And your acquaintance with cannerymen is that they catch as many fish as they can? A. Yes.

Q. And every device to get fish is used, isn't it?

A. No, not always.

Q. Well, what do they fail to make use of that is effective?

(Testimony of T. P. Keegan.)

A. I can only state from my own experience.

Q. Well, you are testifying now as an expert.

A. That is, can I state as to what I have done when I found that I had more fish than I needed, that is, as to what I had in the traps?

Q. That isn't the question.

A. I didn't understand you.

Q. What device is there that will be more effective in catching fish that isn't generally used in the cannery?

A. There is no other device that I know of.

Q. And the purpose, your purpose when you were in the fish business was to catch all the fish that you could use?

Mr. WINN.—I object to the question as not proper redirect examination. He is asking a few expert questions, now he is coming down—suppose Keegan did, suppose he fished them out of every river. That wouldn't be material in this case and not proper redirect examination.

The COURT.—I don't think it is strictly redirect examination, Judge Folsom.

Mr. FOLSOM.—I think this man is an expert and ought to be allowed to answer the question.

The COURT.—But he can't be allowed to answer every question just simply because he is an expert.
[253—127]

Q. (By Mr. FOLSOM.) Supposing, Mr. Keegan, that the heart wall was lowered just to the water-line and there were fish in the heart, what would become of those fish?

(Testimony of T. P. Keegan.)

A. That is, lowered just to the water-line?

Q. Yes.

A. Well, if the fish got around to that place there and the heavy weight of fish would take it down some so that part would get out,—they wouldn't all get out, but some would get out.

Q. And you understand that the law provides that the heart wall next to the pot should be raised or lowered at a width of twenty-five feet?

A. Yes.

Q. And it was for the purpose of allowing the fish to get out?

A. Yes, to proceed on to the spawning grounds.

Q. The general tendency of the fish is after they once get into the heart or pot is to stay there?

A. No.

Q. More get out than remain in?

A. Oh, they go in and out at different times.

Q. But the sum total is that more remain than get out; isn't that true?

A. That is, where they pass on into the pot.

Q. Isn't it true that more go from the heart into the pot than get into the heart and into the pot and back again? A. Yes, I guess they do, yes.

Mr. FOLSOM.—That is all. [254—128]

Redirect Examination.

(By Mr. MUNLEY.)

Q. Mr. Keegan, I don't know whether you got it before the jury as to what was said in answer to a question on cross-examination in reference to the trap being down to the water-line, the web being

(Testimony of T. P. Keegan.)

lowered to the water-line in the heart next to the pot. I want to ask you if the web were lowered so that it was three to five feet at the water-line in width across from the pot to the lowering stick, what would be the effect—would it allow free passage or otherwise? A. I didn't quite understand you.

Q. Suppose this were like that—this stick like that; suppose the water was five feet across there—would that be free access to salmon fishes? (Indicating.)

A. Yes, as long as the water was above the bottom of the opening.

Q. Suppose there were two, three to five feet there; would salmon coming in here hesitate a minute? A. No.

Recross-examination.

(By Mr. FOLSOM.)

Q. Did you ever see a fish jump over the line—over the rope?

A. Yes, when the webbing was down close to the water.

Q. You have seen them get back a ways and make a jump? A. Yes.

Q. Any others follow him?

A. I haven't noticed that; occasionally they would, but they wouldn't follow like that.

Q. Wouldn't follow the lead like that?

A. No. [255—129]

Redirect Examination.

(By Mr. MUNLEY.)

Q. When it comes to salmon jumping, you have

(Testimony of T. P. Keegan.)

seen some? A. Yes.

Q. Isn't it a well-known fact that they climb very precipitous places? A. Yes.

Q. Isn't it a fact that they climb the falls in some of these large and small rivers? A. Yes.

Q. Isn't it a fact that you have seen pictures where you have seen the salmon jumping over the falls?

Mr. FOLSOM.—I object to the question. He might just as well say he saw them jump trees.

Mr. MUNLEY.—The greatest detective of modern times is the photograph.

The COURT.—That is true, but I have seen photographs of men falling out of balloons in moving picture shows and I know they have never happened.

Mr. MUNLEY.—Well, that is one on me. That is all.

Recross-examination.

(By Mr. FOLSOM.)

Q. You say there are six changes of the tide during the closed period? A. That is, every six hours.

Q. What would be the effect of the fish in the pot during these changes of the thirty-six hours in leaving the heart?

A. You mean—that is, the fish that would be in the pot, what [256—130] would be the effect?

Q. In the heart?

A. That is, with the openings—

Q. Yes; would they—

A. They would pass in and out.

Q. A good many would be liable to stay there, wouldn't they?

(Testimony of T. P. Keegan.)

A. They might, but what I have noticed they would pass in and out.

Q. Well, the heart is merely constructed to keep them in there?

A. No; it is more to lead them into the pot.

Q. The heart is constructed in order to keep them in the heart until they gradually work their way into the pot? A. Yes.

Q. And you don't mean to say that if the webbing was lowered only eight feet from the top that the fish wouldn't remain in there if there was forty feet of water below that line, do you?

A. You mean if the opening extended below the water-line?

Q. Down to the water-line, say eight feet from the capping, and there were fish in the heart, wouldn't they remain there?

Mr. WINN.—We object to the question.

Q. (By Mr. FOLSOM.) Or would they turn around and go out of the heart?

Mr. WINN.—We object to the question because it is not a proper hypothetical question; if he is going to base it on any evidence in the case—

The COURT.—He is cross-examining him on your hypothetical question.

Q. (By Mr. FOLSOM.) What would become of the fish?

A. If that opening extended below the water-line, they would pass out when they got to it. [257—131]

Q. If it extended below *below* the water-line?

A. Yes.

(Testimony of T. P. Keegan.)

Q. If it extended only to the water-line?

A. If it extended only to the water-line, if the fish got in large numbers, the weight would bear it down some so that a good many would go out.

Q. And a good many would remain? A. Yes.

Q. They would keep playing around in the heart?

A. Yes.

Q. And the heart is made for that purpose?

A. Yes, so as to lead them into the pot.

Q. The man who constructed that understood fish and it was constructed to take advantage of the fish?

A. Yes, so as to catch fish in an easy way.

Q. And it is like a reservoir to catch fish?

A. Yes.

Redirect Examination.

(By Mr. MUNLEY.)

Q. Would it be possible to impound fish in the heart at all if there was any opening next to the pot whereby they could escape? A. No.

Recross-examination.

(By Mr. FOLSOM.)

Q. Did you ever see any of the fish climb up the web and crawl over? A. No.

Mr. FOLSOM.—That is all.

(Witness excused.) [258—132]

[**Testimony of J. P. Nelson, for Defendant.**]

J. P. NELSON, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. MUNLEY.)

Q. What is your full name? A. J. P. Nelson.

Q. What is your business? A. Salmon fishing.

Q. How long have you been in the salmon fishing business? A. Since '93—1893.

Q. Twenty-one years? A. Yes, sir.

Q. Where have you operated in the fish business?

A. Puget Sound and Alaska.

Q. How long have you been in Alaska?

A. Three years and one year—some few years on Lynn Canal.

Q. What has been your experience in the operation of salmon traps? A. In what way?

Q. Well, in the operation personally of traps or with the owners?

A. I have always been interested in traps myself.

Q. And at the present time you are interested in some traps? A. Yes, sir.

Q. What, from your experience, is the nature of the salmon fish of the Pacific—are they wary fish or otherwise? A. They are, indeed.

Q. Game fish? A. Game fish, yes.

Q. You have observed in your experience the habits of salmon [259—133] when they meet an obstacle on their way to the spawning ground, and, first of all, you may tell how salmon proceed on the

(Testimony of J. P. Nelson.)

way to their spawning grounds?

A. They usually travel on a flood tide and when they come in contact with the lead sometimes they will turn ashore, but they will invariably turn off shore to deeper water. They follow the lead—it is owing to how the lead is constructed, is my experience, whether or not they follow it very closely; that is, how the tide sets on the lead. From there they travel into the heart, if the tide is so it keeps the fish—running inshore on the lead. They keep quite a ways from the lead.

Q. Why do they do so?

A. They are afraid of it.

Q. Proceed.

A. When they get into the hearts, if the tide is running they usually head for the tide. It is impossible to keep the other way, because they are up against the wire on the lead on the other side, so they always keep their heads towards the tide. From there they gradually work into the pot and sometimes make several or a dozen turns around the heart before they go into the pot.

Q. And what is the nature of their action as they approach the tunnel in the pot?

A. They are always afraid of any dark space such as the tunnel would be with two pieces of webbing coming close together at the mouth and very timid.

Q. Do they run in very readily?

A. No, sir, they do not.

Q. What is the fact, from your observation, with regard to their attempts to get into the pot from the

(Testimony of J. P. Nelson.)

heart; is it a clear [260—134] straight passage—do they run into the heart and circulate a while or is it otherwise?

A. They make several turns around the heart and sometimes a school will go into the tunnel, a third of them, or three or four of them, and part go back.

Q. What is the purpose of the jigger?

A. To prevent salmon from going around the trap, either coming out on the lead or after going into the heart, to turn them on the lead again.

Q. What is the fact as to whether or not the heart alone would impound the fish, or would it impound all the fish unless you had the jigger?

A. I don't think so, that the heart would impound the fish at all; they wouldn't stay in there.

Q. They wouldn't stay in there? A. No.

Q. Could you catch any fish in the heart if there was any opening in the heart next to the pot above low water?

A. Not if sufficient width for them to get through.

Q. What is your idea about a sufficient width?

A. Two or three feet.

Q. How quick would it take to—say deliver several thousand salmon if they were in the heart at the time the lowering sticks were put down?

A. It wouldn't take but a very few minutes.

Q. Why?

A. The reason why is because there is nothing to obstruct—there is no dark place—it is getting out of the dark space in the heart, out to where there is more light, and they will take that very readily to get free.

[261—135]

(Testimony of J. P. Nelson.)

Q. Now, with regard to their action when they get into the pot, does it differ in any way from when they get in the heart?

A. They will gradually get more tame.

Q. What, then, is their attitude or their conduct—direction in regard to the walls?

A. They follow the walls of the trap, particularly on the flood side, looking for an avenue of escape.

Q. Do they ever get out of the tunnel again, from your observation? A. Yes, sir, quite frequently.

Q. Would it be safe practice where there was any opening in the heart next to the pot to open the tunnel into the heart? A. No, sir.

Q. What would be the result?

A. We would lose a lot of fish with nothing to turn them back.

Q. From your experience, what is the general opening to the trap? A. Fourteen feet.

Mr. REAGAN.—How was that?

Q. I asked him as to the practice in the width of opening in traps in this locality. You said fourteen feet. Now, suppose it was a double-heart, or a heart that fished from both sides; what would be the opening then?

A. We have a regular rule for that, twenty-four feet on the outside lap of the heart.

Q. (By Mr. MUNLEY.) That would be twelve on one side?

A. No; twenty-four on one side and fifteen on the side where we catch the least number of fish.

Q. Then altogether there would be an opening in

(Testimony of J. P. Nelson.)

such double-heart something like thirty-six feet—the entrance from the lead? A. Yes, sir.

Q. With such an opening as that and with the hearts open to any [262—136] sufficient extent to permit the free passage of salmon next to the pot, would it be possible to impound salmon in the heart?

A. No, sir.

Q. What would be the tendency?

A. They would escape.

Q. How about with reference to the tides; do they fish at all tides? When I say fish, I mean do they run into the trap? A. No.

Q. What tide is usually considered the best tide for fishing? A. Flood tide.

Q. Do they fish at slack tide?

A. Sometimes traps will fish with a slack tide.

Q. At low tide?

A. When the tide begins to flood.

Q. Do they ever fish on an ebb tide?

A. No, I have never been successful to fish on an ebb tide.

Mr. MUNLEY.—You may take the witness.

Cross-examination.

(By Mr. FOLSOM.)

Q. Where did you do your last fishing?

A. In Icy Straits.

Q. When? A. This season.

Q. Are you personally a fish-trap man, or do you work for or represent a company?

A. I am superintendent, fishing fish-traps.

Q. You are very much interested in this case?

(Testimony of J. P. Nelson.)

A. I am. [263—137]

Q. You and your company also have an indictment here? A. Yes.

Q. You say that the salmon is rather a wary fish; is that true? A. Yes.

Q. He isn't as wary as the canneryman that is trying to catch him?

Mr. MUNLEY.—That is kind of a smart question.

Mr. FOLSOM.—I think it is all right, if the Court please, because this witness by his testimony wants the jury to believe that there are more fish get out of the trap than get in and I want to show that the wiles of the canneryman are such as to catch those fish. I think that is the reason that the providers of the law provide that twenty-five feet—

The COURT.—Yes, but that doesn't depend upon whether the canneryman is smarter than a fish. The objection is sustained.

Q. (By Mr. FOLSOM.) How many flood tides are there in the weekly closed season?

A. There are about six.

Q. Six? A. Almost six.

Q. And there are six tides during the weekly closed season when it is the best fishing time, aren't there? A. Yes.

Q. And after all—

A. There are not six; I think you are mistaken about the tide—there are three ebbs and three floods—those are the tides. It constitutes an ebb and flood to make a tide, as I understand it.

Q. After all is said and done, the trap as used is a

(Testimony of J. P. Nelson.)

pretty successful fish trapper, isn't it? [264—138]

A. Some of them are.

Q. They are constructed to catch fish?

A. We aim to catch fish.

Q. If there are fish come along in that vicinity, you catch them? A. Not always.

Q. Now, Mr. Nelson, suppose that the fish, or some of the fish, should get out of the heart, the jigger would intercept them, wouldn't it?

A. Some of them, yes.

Q. And that jigger is for the purpose of turning them back into the heart? A. Yes, sir.

Q. And they are just as apt to be turned back in the weekly closed season as they are at any other time?

A. They don't go into the hearts in that season; they go out the opening prescribed by law.

Q. Don't they get into the hearts exactly the same way in the closed season? A. Yes, sir.

Q. The fish don't take any recognition of the closed season; their habits are the same during the closed season as they are at any other time?

A. Yes, sir.

Q. If they should happen to get out of the heart and run up against the jigger and the jigger would guide them back in the heart—

A. There is very few of them get out that way during the closed season, because they can get through the opening that is left for them.

Q. That depends on how much opening there is?

A. Well, yes—three or four feet. [265—139]

(Testimony of J. P. Nelson.)

Q. If the heart is raised or lowered twenty-five horizontally next to the pot, of course, they would get away? A. Yes.

Q. What become of the fish that are in the heart below the water-line?

A. All fish are below the water-line; they are in the heart.

Q. Say that you lower your webbing—say down to the water-line at that stage of the tide—fish in the heart, what becomes of him?

A. He would remain there or go out the way he come in until the tide would raise sufficient to let him go out.

Q. Supposing it was just down to the high tide line, what would become of him?

A. He would have to stay there or get out the way he come in.

Q. And very few get out of the heart?

A. Unless they jump out.

Q. And as a matter of fact, the heart is a very good fisher? A. No, it is not good to retain them.

Q. But it does retain a good many of them?

A. They gradually work out in time.

Q. *That* there weren't any fish remaining in the heart during the closed season? A. No, sir.

Q. Doesn't make any difference what the stage of the tide is?

A. No, they won't stay in there thirty-six hours.

Q. If the tunnel was left partially open and the walls of the heart were lowered, wouldn't some of the fish go through that tunnel into the pot?

(Testimony of J. P. Nelson.)

A. No, they would go out where the parts were lowered.

Q. Irrespective of tidal conditions?

A. Irrespective of tidal conditions, if it was lowered sufficiently [266—140] below the water so that they could get out.

Q. What was the purpose of providing for closing the tunnel; was that an idle provision?

A. That was, I presume, to keep the fish from going in—as an extra precaution so that they couldn't get in.

Q. But the probability of their going in would be very slight?

A. They wouldn't go in if they had the opening in the heart to get out.

Q. They would seek that first?

A. They would.

Mr. FOLSOM.—That is all.

Redirect Examination.

(By Mr. MUNLEY.)

Q. As a matter of fact, Mr. Nelson, would the trap fish if the tunnel were closed although the heart were all closed; suppose the heart was all closed but the tunnel were closed, would the trap catch fish?

A. They would go into the heart.

Q. But they wouldn't be caught, would they?

A. No.

Q. Suppose the tunnel would be opened and the hearts would be opened, would it fish?

A. You mean the webbing let down?

Q. Yes. A. No.

(Testimony of J. P. Nelson.)

Q. What would be the effect?

A. They would take the opening in the heart first.

Q. Would it be a greater risk to have a combination of such conditions than it would be to have the tunnel closed?

A. I would prefer to have the tunnel closed when the hearts [267—141] were down.

Mr. MUNLEY.—That is all.

Recross-examination.

(By Mr. FOLSOM.)

Q. To prevent catching fish?

A. To prevent them escaping.

Redirect Examination.

(By Mr. MUNLEY.)

Q. Mr. Nelson, did you ever observe the low tide to extend over the thirty-six hours during the closed season? A. I don't understand the question.

Q. Did you ever see it low tide all the time during the closed season? A. No, sir.

Recross-examination.

(By Mr. FOLSOM.)

Q. You never saw it high tide either, did you?

A. No, sir.

Mr. FOLSOM.—That is all.

(Witness excused.) [268—142]

[**Testimony of Rolla Davis, for Defendant.**]

ROLLA DAVIS, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. WINN.)

Q. Mr. Davis, you are in the fishing business too, are you? A. Yes, sir.

Q. What cannery have you been running in Alaska for the last couple years or so?

A. The Tee Harbor Packing Company.

Q. At Tee Harbor? A. Yes, sir.

Q. Have you ever followed trap fishing to any extent in connection with the fish business?

A. Yes, sir.

Q. Did you ever fish on Puget Sound?

A. I fished on Puget Sound.

Q. How long have you been engaged in the business? A. Since 1895.

Q. Now, Mr. Davis, without asking you a lot of questions, I wish you would just briefly state about the manner of fish working their way into the heart and their actions and habits, etc.; just briefly explain what you observed.

A. Well, when the flood sets—we try to catch fish the way this trap is now situated, so that the flood tide is coming from there and if the tide is coming more—what we call on the front of the pot there, from that angle, and fish hit the lead, they will immediately work up here; that is, immediately, I mean in time as they swim around. They begin to head with the tide and the thing is reversed around—as

(Testimony of Rolla Davis.)

the tide comes off the beach in this direction they will likely come [269—143] up here toward the opening and as the tide slacks a great many work out, but nearly all trap men set traps so the tide will hold them up there to force them into the tunnel. (Indicating.)

Q. What about the rise and fall of the tide about the fish remaining in the heart, or are they apt to find their way out the way they got in? Explain that.

A. When the tide comes slack, so there is no direct current to buck against, they play around and around in there and if it comes in this way, they find a stream of water, water in here, and comes working out—perhaps a dozen might come out out of a thousand. It would empty itself out if the tide should run off-shore, that is, this part of the lead. It would empty out the heart. (Indicating.)

Q. Out of the heart?

A. Yes, sir, on this side.

Q. Now, Mr. Davis, suppose between the closing hours as laid down in the statute, you know what they are,—if the mouth of your tunnel which leads from the heart into the pot should be closed during that season, how much of a space, in your judgment, would be necessary for the heart to empty itself near the pull-down sticks, or closing sticks?

A. That would be according to the action of the current; suppose the tide was coming in here and they worked up here and found a fresh stream of water there; this water is dead where the webbing is, more dormant back here, until it comes to an open-

(Testimony of Rolla Davis.)

ing and then they work right along a continual stream and go out. I have seen them go through very small spaces. If the tide is slack, it takes a larger space, because the water is more dormant back here—there in the hearts. (Indicating.)

Q. What space under the circumstances, in your judgment, would [270—144] furnish free passage for salmon and other fish, referring to the space down near the mouth of the tunnel that leads into the pot from the heart?

A. Well, three or four—four or five should clear the trap readily enough. Any amount would go out—when the long shove-down, the weight of the web pulls the web down so that there is a bend in it, because it is fastened at the top and fastened at the bottom.

Q. You have seen them go through a very small space?

A. Yes; it is spread out—if there was a large number of fish, it would take a larger amount of space.

Mr. WINN.—That is all.

Cross-examination.

(By Mr. FOLSOM.)

Q. You spoke about a fresh stream of water running out; do you mean to imply that the fresh stream of water does the same as a fish does and finds this opening to run through?

A. No, but they seek that opening. When I say fresh water, I don't mean fresh water—I mean salt water.

Q. You don't mean that the fresh water follows

(Testimony of Rolla Davis.)

the lead the same as a fish itself? A. No.

Q. All around the heart—

A. There is a channel through there for the—it is wire or cotton, as the case may be, and the meshes between clog with seaweed that way and it makes a dead space of water inside the hearts.

Q. You mean to say that under those conditions that you have described, that the water only runs out through these openings in the heart wall? [271—145]

A. No, sir, I do not, but I mean it runs more rapidly there and with a greater amount of force than it does through the wire.

Q. You are very much interested in the result of this case? A. I am, vitally.

Q. Because you have one of the same?

A. Yes, sir.

Q. Your traps are constructed in the same way as the defendant company's traps?

Mr. WINN.—We object to the question. It is not proper cross-examination. It has already been elicited from this witness that the defendant company has traps and we have never questioned him about his traps. We have simply asked him about fish going in and out and not any particular traps.

Mr. FOLSOM.—The witness has been introduced here as an expert witness and I want to know if theirs are a different kind of trap.

Mr. WINN.—That is a question that concerns the trial of their case.

The COURT.—Why don't you object on the

(Testimony of Rolla Davis.)

ground that it might incriminate him?

Mr. WINN.—I object.

The COURT.—Objection sustained.

Q. (By Mr. FOLSOM.) Have you ever watched the fish in the heart, Mr. Davis?

A. A great many times.

Q. Do you mean to say that no fish will remain in the heart if the walls are lowered down say to the water level at that stage of the tide?

A. At that stage of the tide—I think they would stay there at that stage of the tide. [272—146]

Q. Suppose it is lowered down to one-half tide, will the fish remain in there?

A. I don't quite get your question, Mr. Folsom.

Q. Well, you mean to say if the heart wall was lowered to low tide, there would be no fish in there at all?

A. No, I do not mean to say that—you said the water-line. You mean the low-tide line?

Q. Yes, down to the low-tide line.

A. I think whatever fish were in that heart below the low-tide line would remain there until the tide started to raise.

Q. You think, then, they would all go out?

A. Yes, sir.

Q. Supposing that the web of the heart walls was at high tide lowered to just that point?

A. Well, fish are in where they are in the water. They are below the line of the webbing.

Q. Then they would remain there?

A. They certainly would, if there was no egress for them.

(Testimony of Rolla Davis.)

Q. Did you ever see any fish-traps where twenty-five feet of the webbing was lowered to the bed of the sea or raised up to the high-tide line?

A. I can't say that I have.

Q. Did you ever see twenty-five feet of the heart-walls lowered to the bed of the sea?

A. I can't say that I have.

Q. During the weekly closed season, did you ever see twenty-five feet of the heart wall lowered to the bed of the sea?

A. I can't say that I have.

Q. Or raised above the high tide?

A. I can't say that I have.

Q. Did you ever see the heart wall next to the pot lowered horizontally twenty-five feet, lowered at all any distance? [273—147]

Mr. WINN.—I object to the question on the same ground as before, that this witness will be a witness in his own case and whether it would incriminate him or not, it is taking unfair advantage of Mr. Davis.

Mr. FOLSOM.—It isn't for that purpose at all; eliminate Mr. Davis altogether.

The COURT.—I think so, Judge Folsom,—How could he do that—eliminate him? You said, "Did you ever see it."

Mr. FOLSOM.—I say, exclude his own traps.

The COURT.—You cannot exclude it when the question is: "Did you ever see it."

Mr. FOLSOM.—I am not talking about his own traps at all,—anybody else's traps.

The COURT.—If you put it that way, I cannot

(Testimony of Rolla Davis.)

see how it would incriminate him.

Mr. WINN.—If he—

Mr. FOLSOM.—We excepted his traps all the time.

The COURT.—Q. Excluding your own traps, did you ever see a trap of anybody's else's except yours—
Read the question.

(Q. read by stenographer:) Did you ever see the heart wall next to the pot lowered horizontally twenty-five feet, lowered at all any distance?

The COURT.—Q. Not your traps — anybody's else's?

A. Not that I can swear to.

Q. (By Mr. FOLSOM.) The traps are constructed to catch fish?

A. That is the prime object.

Q. And catch as many as you possibly can?

A. That is what I do.

Q. And the trap as constructed is pretty effective?

A. It is in certain waters. [274—148]

Q. Do you agree with Mr. Nelson that the salmon is a wary fish? A. Yes, sir.

Q. The fact of the case is, that the ordinary fish leaves all hope behind when he gets into the heart, doesn't he?

A. Not necessarily so, Mr. Folsom.

Mr. WINN.—That is a psychological question.

The COURT.—No, I should say that was poetical.

Redirect Examination.

(By Mr. WINN.)

Q. Usually, Mr. Davis, in the construction of a

(Testimony of Rolla Davis.)

trap, ordinarily, in general cases, about how deep is the water where the lead intersects the heart?

A. At high or low water?

Q. Say low water.

A. I would say generally it runs from thirty to thirty-five feet. It largely depends upon the ground; some ground is more steep than others.

Q. How deep is the water down here where fish leave the heart and go into the tunnel from the pot?

A. It is probably ten or fifteen feet deeper. It depends on the slope of the ground. The distance from the capping is fifty or sixty feet to the tunnel stake and this ground is more or less abrupt here—very few deep places.

Q. How much deeper would you say it was?

A. There are probably thirty feet more. [275—149]

Recross-examination.

(By Mr. FOLSOM.)

Q. About what depth of water do you generally seek to have your pot and spiller in?

A. Well, Judge, we generally put our patent spiller in just whatever depth we can get it to so as not to exceed seventy-five feet at the hearts. Sometimes the inside wall may be seventy-five feet of water and the outside might be a hundred feet.

Q. What is the average length of the piling, that is, just next to the pot in the heart? What would be the average length of the heart piles?

A. I have driven about sixty-five or seventy feet.

(Testimony of Rolla Davis.)

Q. And that is about the depth you cannerymen like to get?

A. We would like to get shallower than that, but that is what we are forced to do here.

Q. I will ask you about how much higher is the lower part of the tunnel than the bottom of the heart?

A. That would depend entirely upon the depth of the water; the bottom of the heart goes to the bottom of the bay and the bottom of the pot goes about forty feet. I use sixty feet, while some people use forty feet.

Q. There is some proportional feet?

A. Only the difference between thirty-six and seventy, whatever that might be.

Q. Does the bottom of the pot and the spiller come down as low as the bottom of the heart?

A. No, sir.

Q. About what would be the difference?

A. I just stated that if the heart was seventy feet and the pot forty, there would be thirty feet of difference. [276—150]

Q. Then you have an apron dropped down from the bottom of your pot and spiller so that the fish cannot get out from the heart?

A. From the pot, no, Mr. Folsom.

Mr. FOLSOM.—That is all.

(Witness excused.)

(Whereupon the jury was admonished and Court adjourned until 10 A. M., October 30, 1914, when Court reconvened pursuant to adjournment.)

The COURT.—Call the jury.

(Clerk calls jury and all answer present.)

The COURT.—Proceed, gentlemen.

Mr. WINN.—We rest, your Honor.

The COURT.—Any rebuttal?

Mr. REAGAN.—We had some rebuttal; Mr. Walker is out now to bring in some witnesses. I didn't think the other side would end so abruptly.

The COURT.—You knew there was a possibility that they would close.

Mr. REAGAN.—We would like to have Mr. Walker here at least.

The COURT.—How long will it take to get Mr. Walker?

Mr. REAGAN.—I will send right away after him, if the Court please.

The COURT.—Ten minutes?

Mr. REAGAN.—Maybe; we will try it.

(Whereupon the jury was admonished and excused until 10:30 A. M. the same day, when Court reconvened pursuant to adjournment.) [277—151]

The COURT.—Let the record show that the jury is present.

Mr. REAGAN.—We rest.

The COURT.—Proceed with the argument.

Whereupon M. G. Munley and Winn & Burton, attorneys for the defendant in all of said cases consolidated, numbered 1034-B, 1035-B and 1036-B, offered, tendered and requested the Court to give to the jury the following instructions: [278]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

Nos. 1034-B, 1035-B, 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

Instructions [Requested by Defendant].

INSTRUCTION NO. 1.

Gentlemen of the Jury, this is a criminal case consisting of three indictments against the defendant, and each indictment containing two or more counts or charges, each countercharge claiming on the specific date mentioned therein that the defendant violated the fishing laws of Alaska by reason of maintaining and operating certain fish-traps and failing to, in some instances or some of the counts, to raise or lower the web of that part of the trap known as the heart, as required by law, and in other counts charging this last matter and also the failure to close what is known as the tunnel leading from the heart of the trap to the pot, as required by law. It is necessary for the Government to prove these facts last mentioned beyond a reasonable doubt before you would be justified in finding the defendant guilty of any one or more of the counts contained in the three indictments referred to herein. And should the Government fail to prove to your mind

beyond a reasonable doubt that the facts mentioned herein are true, then, it is your duty to acquit the defendant.

INSTRUCTION NO. 2.

I also instruct you, Gentlemen of the Jury, that the purpose and spirit of the law is to protect salmon so that they may not be obstructed in their passage to their spawning ground during the weekly close season. Unless the Government in this case prove to your mind beyond a reasonable doubt that the web [279] of the heart of any trap described in any of these various indictments or various counts was not raised, opened or lowered in such a manner as to permit the free passage of salmon or other fishes to escape and go to their spawning ground, then, it is your duty to return a verdict of "Not Guilty" herein.

INSTRUCTION NO. 3.

The statute provides that 25 feet of the webbing on each side of the heart next to the pot shall be lifted or lowered in such a manner as to permit the free passage of salmon or other fishes during the weekly close season. As a matter of fact if you find in any of the cases or charges against the defendant, that 25 feet of the webbing of the heart was so lifted or lowered to permit the free passage of salmon or other fishes, your verdict must be for the defendant, and, in this connection the statute does not mean that 25 feet of the heart of a trap must be raised or lowered vertically; if 25 feet of the webbing is lifted or lowered in a "V" shape but yet in such manner as to permit the free passage of salmon and

other fishes such opening is a sufficient compliance with the statute and your verdict must be for the defendant.

INSTRUCTION NO. 4.

The language of the statute is, that 25 feet of the webbing on each side of the heart next to the pot shall be lifted or lowered in such manner as to permit the free passage of salmon and other fishes. That does not mean 25 feet square or that 25 feet must be torn out of the sides of the heart every weekly close season. Any manner of lowering or lifting 25 feet of the heart so as to permit the free passage of salmon and other fishes so that they may go on through the trap to their spawning grounds is sufficient. And if you find as to any of the charges in these indictments that the heart of any [280] trap was so lifted or lowered or opened, your verdict must be for the defendant.

INSTRUCTION NO. 5.

I instruct you that the right of fishing, or of fishery, as it is called, is common and free to every citizen. The Government has, however, the power to regulate and restrict it. This right to free fishing can only be limited or taken away just as far as any such regulations go; and, therefore, the regulations regarding salmon traps during the weekly close season established by the Government cannot be extended or expanded beyond their strict meaning. The statute says that:

“Throughout the weekly close season herein prescribed, the gate, mouth or tunnel of all stationary and floating traps shall be closed, and

twenty-five feet of the webbing or net of the 'heart' of such traps on each side of the 'pot' shall be lifted or lowered in such manner as to permit the free passage of salmon and other fishes."

Unless the language of the statute itself provided that twenty-five feet of the heart on each side next to the pot should be lifted or lowered from the top to the bottom of the heart, it would be adding to the statute to say so.

You must consider the law as it is. You must determine from the evidence whether 25 feet of the web of the heart on each side of the pot was lifted or lowered in such manner as to permit the free passage of salmon and other fishes. If you find that it was so lowered or lifted in any of the charges against this defendant alleged in the various indictment you must acquit the defendant.

The Court refused to give said instructions and each and all of them, to which said refusal and ruling of the Court the defendant, by its attorneys, excepted and exception was allowed. [281]

(Argument by Mr. Folsom and Mr. Munley.)

(At 12 A. M. The Jury was admonished and court adjourned until 2 P. M., the same day when court reconvened pursuant to adjournment, the jury and all counsel being present.)

(Resumption of argument by Mr. Munley.)

(Argument by Mr. Winn and Mr. Reagan.)

Whereupon after the argument of said case to the jury, the Court instructed the said jury as follows, to wit: [282]

INSTRUCTIONS TO JURY.

The COURT.—Gentlemen of the Jury: This lawsuit between the Government of the United States and the Thlinket Packing Company is being tried before you and me. You are the jury and I am the judge—it takes both you and me to make the Court. I have certain functions prescribed by the law and you have certain functions prescribed by the law. It is a good thing, and the law commands that I do not interfere with your functions, and that you do not interfere with mine. The law says just what your functions are and it says what my functions are and it says when you perform your functions and I perform my functions, the object and end of the law will be fulfilled.

So you see, it is just as important for you to do your duty as it is for me to do my duty. Now, the law says, and this is not just talk—it is the law—the law says that the jury are bound to receive as law what is laid down as such by the Court, but that all questions of fact must be decided by the jury and all evidence is addressed to them. Now, those are not mere sounds—they are words in the English [283—152] language. They are words that live and breathe and throb and have a meaning and stand up and look you in the face, and look the counsel in this case in the face, and they look me in the face, and they look everybody in the face, and they say: That is what I said and that is what I mean—that the Court tell the jury what the law is and the jury find the facts from the evidence.

Now, in every case, gentlemen of the jury, there

are important things and there are unimportant things, and it is your duty, just as it is my duty, not to magnify the unimportant things, and not to minimize the important things. So far as my functions are concerned, the important thing for me to decide is what I think the law is, and so far as your functions are concerned, the important thing for you to decide is: What does the evidence show.

It is not a matter of any importance in this case what a man by the name of Bower may have interpreted this law to be. It is not a matter of importance in this case, so far as my functions are concerned, how a man named Cobb may have interpreted this law. It is not a matter of importance how the Department itself may have interpreted this law. It is a question of what I think the language—what I think this law means, and whatever I think it means and what I tell you it means, you must accept as the law of the case.

Now, the indictment in this case is drawn under a certain section of the statute—I will read you that section:

“Throughout the weekly closed season herein prescribed, the gate, mouth or tunnel of all stationary and floating traps shall be closed, and twenty-five feet of the webbing or net of the heart of such traps on each side next to the pot shall be lifted or lowered in such manner as to permit the free passage of salmon and other fishes.”

Now, I will tell you, gentlemen, what I think that [284—153] section means and, first, I will say that I

think it means just exactly what it says. I don't think there is a superfluous word in that section, nor a word that doesn't express its meaning. Now, let us see: "Throughout the weekly closed season herein prescribed"—The statute has just prescribed that from six o'clock Saturday afternoon to six o'clock Monday morning is the weekly closed season. Now, it says: "Throughout the weekly closed season herein prescribed—(that is the time now)—the gate, mouth or tunnel"—some people call it a gate, some call it a mouth, some call it a tunnel, so it says: "The gate, mouth or tunnel of all stationary and floating traps"—some traps are stationary and some floating, evidently, but the section takes them both in—"of all stationary and floating traps shall be closed *and*—(it doesn't say *or*)—twenty-five feet of the webbing or net of the heart of such traps on each side next to the pot shall be lifted or lowered in such manner as to permit the free passage of salmon or other fishes." Now, let us see—it wouldn't do to say that some of the net or webbing shall be lowered, unless the statute says how much shall be lowered, so the statute says twenty-five feet of the webbing or net shall be lowered or raised. If the statute stopped there, it would not be definite, because it wouldn't say what part of the webbing of the heart of the fish-trap, so it is going to be definite about that, so it says: "twenty-five feet of the webbing or net of the heart of such trap." That wouldn't be definite if it stopped there, because the heart of a trap has two sides, so it says, in order to make that definite: "Twenty-five feet of the web-

bing or net of the heart of the trap on each side”—each side means both sides, consequently—“twenty-five feet of the webbing or net of the heart on both sides”—that wouldn’t be definite if it stopped there, because [285—154] the heart extends over some little distance—“what part of the heart?”—Then it says: “The heart next to the pot.” What is to be done with it, this twenty-five feet of the webbing of the heart next to the pot on both sides of the heart—what is to be done with it”? It shall be lifted or lowered.” Now, there is the conjunction “or”—either one, either lifted or lowered. Is that the end of the section? No. It not only says twenty-five feet of the webbing of the heart next to the pot on each side be lifted or lowered, but that twenty-five feet must be lifted or lowered in a certain way or to accomplish a certain end and so it says that it must be lifted or lowered in such manner as to permit the free passage of salmon and other fishes.

Now, that is a positive command, gentlemen, that twenty-five feet of the net of the heart next to the pot shall be either lifted or lowered, twenty-five of it, and it is not only a command that twenty-five feet of it be lifted or lowered, but it is also a command that that twenty-five feet be lifted or lowered in a certain particular manner and to accomplish a certain particular end. Now, take that window-pane just over you—you see a string hanging down that seems to divide that window-pane in two parts. Suppose that window-pane were actually in two separate parts, so that each part could be lowered or

raised and each part was twenty-five inches wide, and I asked you to please lower or raise twenty-five inches of that window next to this wall. (Indicating.) I cannot see how it means anything but that I am asking you to either raise or lower that part of the window. I am not asking you to shove the window back—I am not asking you to move the window this way or that way—I am asking you to raise or lower it. Now, twenty-five feet [286—155] of the webbing of the heart next to the pot can be raised or lowered, but it need not be horizontal all the way from one end to the other, but there must be twenty-five feet of it in the clear, raised or lowered in such a way as to permit the free passage of fish—salmon and other fishes—for the whole distance of the twenty-five feet.

Now, gentlemen, that is all there is in this case. That is the law of this case as I understand it. Now, the facts in the case are for you to pass on. Has the Government proven to you beyond a reasonable doubt that twenty-five feet of the webbing of the heart on both sides next to the pot have not been raised or lowered in such a manner as to permit the free passage of salmon and other fishes? If the Government has proved that to you beyond a reasonable doubt, it is your duty to convict on each and every count, if that has been the proof on each and every count. If the Government has not proven that to you beyond a reasonable doubt, it is your duty to acquit.

Reasonable doubt does not mean beyond any and all doubt. It does not mean that you are to conjure

up doubts and by strained constructions make doubts for yourself—it means when you take all the testimony in the case— When you take all the facts and circumstances of the case—if you are convinced—if you are satisfied to a moral certainty, with that degree of conviction that would lead you to act on the important affairs of life, then you are said to be satisfied beyond a reasonable doubt.

You are the sole judges of the credibility of these witnesses. You must consider what they testified to—you must consider their demeanor and appearance on the stand, their candor or lack of candor, their ability to know the truth and their disposition and their inclination to tell the [287—156] truth. You must take into consideration and you may take into consideration what interest, if any, has been shown by the testimony that they had in the case. You may take all these facts into consideration and make up your mind as to whom to believe and what you will believe, what he testified to, just about in the same way as you make it up in the everyday affairs of your life.

Now, gentlemen, there are three indictments in this case. In each indictment there are more than one count. The law provides that these three indictments may be all tried as one case, although the verdict that you bring in will be a separate verdict in each case, that is to say, numbered separately. You may take these indictments 1034-B, 1035-B, and 1036-B, and you will consider the counts in every indictment. If you find the defendant guilty beyond a reasonable doubt on all the counts in all the indictments, then your verdict in each case

would be guilty as charged. If you find that the defendant is not guilty of any violation as set forth in any count of any indictment, then your verdict would be: "We find the defendant not guilty," and sign the verdict. If you find the defendant guilty of some of the counts in the first indictment, but not guilty of certain other counts in that indictment, you find him guilty of count so and so and not guilty of the other counts in that indictment, and the same way with the other two indictments.

Now, gentlemen, you have nothing to do, and I have nothing to do, with whether fish-traps decimate the fish or not. You have nothing to do and I have nothing to do with whether the defendant is a foreign corporation or a domestic corporation, or whether it is a corporation at all. The personality of the defendant makes no difference to you and should not make any difference to anybody who has any function [288—157] to perform in meting out justice or seeing that the law is fulfilled. It isn't a question of personalities—you have nothing to do with that question—and you have nothing to do, as I told you before, with the question as to whether some other inspector has passed these traps or not. You have only to do with this: "Does the evidence show beyond a reasonable doubt that this defendant at the time specified did not raise or lower twenty-five feet of the webbing of the heart next to the pot in these traps in such a way that the salmon might have free and unobstructed passage through that trap or through that part thereof."

(Bailiff sworn.)

Mr. WINN.—I suppose this trap goes in.

Mr. REAGAN.—The exhibits don't as a rule go in.

Mr. WINN.—I understand they always go in.

The COURT.—The statute doesn't say the exhibits shall go in, but do you insist on the trap going in?

Mr. WINN.—Yes, sir, I do.

The COURT.—Gentlemen of the Jury, the Court will adjourn and convert the courtroom into a jury-room.

Mr. REAGAN.—It is very easy to remove it.

Mr. WINN.—We want to dictate some exceptions into the record.

The COURT.—Just a moment. I will send the jury to the jury-room. Get another bailiff and have the fish-trap moved in there. (Jury retires.)

Mr. WINN.—We ask an exception to the refusal of the Court to give instructions numbered one, two, three, four and five as offered to the Court. We also wish an exception to your Honor's instruction and illustration that you made referring to the raising and lowering of the webbing of the heart, especially the comparison made in referring to [289—158] the window and when you *complete* illustrate your definition of what you mention about raising or lowering the webbing of the heart on each side of the tunnel.

The COURT.—Very well; exception allowed.

(Whereupon Court adjourned until 10 A. M., October 31, 1914, subject to the action of the jury.)

At about 5 o'clock P. M. October 30, 1914, the jury

returned into court; whereupon the following proceedings were had:

The roll of the jury was called; each juror answered to his name.

The COURT.—Gentlemen of the jury, have you agreed upon a verdict?

FOREMAN OF THE JURY.—We have.

The COURT.—Hand it to the bailiff.

Bailiff takes the verdicts and hands them to the Court, who opened the verdicts and handed them to the clerk.

FOREMAN OF THE JURY.—Judge, is there any way we can modify that?

The COURT.—You mean you want to ask for the mercy of the Court? Is that it?

Mr. GABBS.—Yes, that is it. We think that while the defendant has violated the letter of the law it has not violated the spirit of the law.

The COURT.—Well, if you wish, you may insert in your verdict, “With recommendation to the mercy of the Court,” if you have agreed upon that.

Mr. GABBS.—We have.

The COURT.—Then you may sit here and insert it right in the verdict.

The FOREMAN.—Would the word “clemency” be the same thing?

The COURT.—Yes.

Whereupon the clerk read the verdicts and defendant’s attorney, Mr. Winn, requested thereupon that the jury be polled. Thereupon the clerk polled the jury, in each case separately, asking each juror individually, “Is this your verdict?”—each juror an-

swered "Yes, it is."

The COURT.—Mr. Gabbs, as foreman of the jury, you will make the statement you made to me a while ago.

Mr. GABBS.—We agreed that the defendants were found guilty as charged, but thoroughly believe that they have erred in the letter of the law and not in the spirit of the law.

The COURT.—Very well—let the record show that.

Mr. WINN.—Your Honor please, under that statement made (to save the record) by the foreman of the jury, we object to the receiving and filing of these verdicts as the verdict of the jury.

The COURT.—Let the record show that.

(Jury excused; whereupon the Court adjourned until 10 A. M. the following day.) [290—159]

That the verdicts rendered, received and filed in said cases numbered 1034-B, 1035-B and 1036-B are as follows, to wit:

United States of America,
District of Alaska.

*In the District Court of the United States for the
District of Alaska, Division Number One.*

1034-B.

THE UNITED STATES OF AMERICA,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion.

. Verdict.

Special August Term, 1914.

We, the jury empaneled and sworn in the above-entitled cause, find the defendant guilty as charged in the indictment with recommendation for clemency of the Court.

Dated, Juneau, Alaska, Oct. 30, 1914.

A. A. GABBS,
Foreman.

United States of America,
District of Alaska.

*In the District Court of the United States for the
District of Alaska, Division Number One.*

1035-B.

THE UNITED STATES OF AMERICA,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion.

Verdict.

Special August Term, 1914.

We, the jury empaneled and sworn in the above-entitled cause, find the defendant guilty as charged in the indictment with recommendation for clemency of the Court.

Dated, Juneau, Alaska, Oct. 30, 1914.

A. A. GABBS,
Foreman. [291]

United States of America,
District of Alaska.

*In the District Court of the United States for the
District of Alaska, Division Number One.*

1036-B.

THE UNITED STATES OF AMERICA

vs.

THLINKET PACKING COMPANY, a Corpora-
tion.

Verdict.

Special August Term, 1914.

We, the jury empaneled and sworn in the above-entitled cause, find the defendant guilty as charged in the indictment with recommendation for clemency of the Court.

Dated, Juneau, Alaska, Oct. 30, 1914.

A. A. GABBS,

Foreman.

That thereafter and within two days from the signing, rendition and filing of each of the above verdicts, the following Motion for New Trial was served and filed herein: [292]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

Nos. 1034-B, 1035-B, 1036-B—Consolidated.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

Motion for New Trial.

Comes now the above-named defendant, by its attorneys, M. G. Munley and Winn & Burton, in each of the above-entitled numbered causes consolidated, and feeling itself aggrieved herein, moves the Court to set aside each and all of the verdicts rendered in said causes No. 1034-B, 1035-B, 1036-B, against the said defendant in each of said causes and filed in this court on the 30th day of October, A. D. 1914, for the following reasons and following causes materially affecting the substantial right of said defendant.

First. Irregularity in the proceedings of the Court and jury and order and orders of the Court made at the time and upon the reception of the verdict herein, and abuse of discretion of the Court by said actions, rulings and orders of said Court by which the said defendant was prevented from having a fair trial herein; which said irregularities in the proceedings of the Court and jury, and rulings and orders of the Court so made, showing such abuse of discretion will more particularly appear by the

affidavits of A. A. Gabbs, Z. M. Bradford, Joe Pippin, J. L. Gage, Charles H. Hall and Wallis George, jurors, hereto attached, and the stenographic report of the rulings, orders and actions of the Court at the time and upon receiving and filing the verdicts herein.

Second. Insufficiency of the evidence to justify the aforesaid verdicts and each and all of them rendered in the above-entitled causes consolidated, and said verdicts and each [293] and all of them are against law.

Third. Error in law occurring at the trial and excepted to by the defendants.

WINN & BURTON,

Attorneys for Defendant. [294]

That the affidavits and stenographic report referred to in said Motion for New Trial as being attached to said Motion, is as follows, to wit: [295]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

Nos. 1034-B, 1035-B, 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

United States of America,
Territory of Alaska,—ss.

**Affidavit [J. R. Homer et al., in Support of Motion
for New Trial].**

J. R. Homer, Wallis George, Z. N. Bradford, D. W. Fales and Charles H. Hall, each for himself being first duly sworn on oath deposes and says: That I was one of the members of the trial jury in the above cases. Upon entering the courtroom to report on our verdict, after the jury had responded to the roll-call, the question was asked by the judge as to whether the jury had agreed on the verdict, and the foreman, A. A. Gabbs, declared that we had, and asked the judge in open court as to whether it were possible for us to make any recommendations qualifying or amending the verdict. The judge asked as to what recommendation or qualifications we wanted, and the foreman thereupon made the statement that, while we believed the defendant had not complied with the letter of the law, still we felt that it had complied with the spirit of the law and wanted to recommend leniency. At that time Judge Winn arose and asked for a court stenographer as he wanted a record of that statement, and Judge Jennings refused to call a stenographer and said to Judge Winn, "I will not order the court stenographer to take such statement," or words to that effect, and then, speaking towards the jury Judge Jennings, said, "What you mean [296] is a recommendation to the Court for mercy, and, if so, you may write it in your verdict," or words to that effect.

Thereupon in the open court, the foreman wrote in each verdict a recommendation for clemency of the Court, and handed the verdict to the clerk. Afterwards Judge Winn arose and asked to have the jury polled, and again called for a court stenographer and at that time the court stenographer appeared. After the jury was polled, Judge Jennings, turning to said foreman of the jury, said, "Now you may make the statement you did on bringing in your verdict," or words to that effect, and the foreman repeated substantially his original statement to the Court.

J. R. HOMER.

WALLIS GEORGE.

Z. M. BRADFORD.

D. W. FALES.

CHARLES H. HALL.

Subscribed and sworn to before me this 31 day of October, A. D. 1914.

NEWARK L. BURTON,

Notary Public for Alaska,

My commission expires November 8, 1917. [297]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

Nos. 1034-B, 1035-B, 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corporation,
Defendant.

Affidavit [of A. A. Gabbs in Support of Motion for New Trial].

A. A. Gabbs, being first duly sworn, on oath deposes and says: That I acted as foreman of the trial jury in the above cases. Upon entering the courtroom to report on our verdict after the jury had responded to the roll-call, the question was asked by the judge as to whether the jury had agreed on the verdict and I, as foreman, declared that we had, and asked the judge in the open court as to whether it were possible for us to make any recommendations qualifying or amending the verdict. The judge asked as to what recommendation or qualifications we wanted, and I thereupon made the statement that while we believed the defendant had not complied with the letter of the law, still we felt that it had complied with the spirit of the law and wanted to recommend leniency. At that time Judge Winn arose and asked for a court stenographer as he wanted a record of that statement, and Judge Jennings refused to call a stenographer and said to Judge Winn, "I will not order the court stenographer to take such statement," or words to that effect, and then, speaking towards the jury Judge Jennings said, "What you mean is a recommendation to the Court for mercy, and, if so, you may write it in your verdict," or words to that effect. Thereupon in the open court I wrote [298] in each verdict a recommendation for clemency of the Court and handed the verdict to the clerk. Afterwards Judge Winn arose and asked to have the jury polled, and again called for a court stenographer and

at that time the court stenographer appeared. After the jury was polled, Judge Jennings, turning to me as foreman of the jury, said, "Now you may make the statement you did on bringing in your verdict," or words to that effect, and I thereupon repeated substantially my original statement to the Court.

A. A. GABBS.

Subscribed and sworn to before me this 31 day of October, A. D. 1914.

NEWARK L. BURTON,

Notary Public for Alaska.

My commission expires November 8, 1917. [299]

*In the District Court for the District of Alaska,
Division No. One.*

Nos. 1034-B, 1035-B, 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING CO., a Corporation,

Defendant.

**Proceedings After Polling of Jurors, October 30,
1914, 5 P. M.**

The COURT.—Mr. Gabbs, as Foreman of the Jury, you will make the statement you made to me a while ago.

Mr. GABBS.—We agree that the defendants were found guilty as charged, but thoroughly believe that they have erred in the letter of the law and not in the spirit of the law.

The COURT.—Very well—let the record show that.

Mr. WINN.—Your Honor please, under that statement made (to save the record) by the Foreman of the Jury, we object to the receiving and filing of these verdicts as the verdict of the jury.

The COURT.—Let the record show that.

(Jury excused; whereupon the Court adjourned until 10 A. M. the following day.) [300]

Said motion for New Trial with said affidavits and said portion of the record in support thereof, came on for hearing on the —— day of ——, 1915, and an order was made herein overruling and denying said motion, to which ruling of the Court the defendant excepted and exception was allowed.

That on the 28th day of January, 1915, the defendant, through its attorneys, M. G. Munly and Winn & Burton, filed the following motion: [301]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

Nos. 1034-B, 1035-B, 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corporation,
tion,

Defendant.

**Motion [of Defendant to Set Aside Verdict of Jury,
etc.].**

Comes now the defendant in the above-entitled cause by its attorneys M. G. Munly and Winn & Burton and moves the Court that the verdict of the

jury to the indictments in the above-entitled cause be set aside or considered and treated as a verdict of acquittal, and that the defendant be discharged upon the following grounds and for the following reasons to wit, *viz*:

I.

Because the true verdict of the jury as expressed by the jurors through their foreman in open court at the close of the trial of the above-entitled cause and after they had retired to the jury-room and deliberated upon their verdict and at the time of bringing in their verdict into Court, was to the effect that defendant had not violated the spirit of the law under which the aforesaid indictments against the above-named defendant.

II.

Because the verdict of the jury to the effect that the defendant had not violated the spirit of the law is the equivalent of a general verdict of "not guilty".

III.

Because such a verdict does not affirmatively find the defendant guilty of all the elements of the crime [302] charged in the indictments.

IV.

Because sentence cannot be passed upon a defendant based upon a verdict other than that of guilty, and the true verdict of the jury in this case was to the effect that the defendant was not guilty of a violation of the spirit of the law.

V.

Because any judgment which might be rendered in the above-entitled cause based upon a verdict of

guilty would be founded upon a verdict which does not specifically find the defendant guilty of all the elements constituting the offense or offenses charged in the indictment and such judgment would be null and void.

VI.

Because said verdict is not responsive to the issues.

M. G. MUNLY and

WINN & BURTON,

Attorneys for Defendant. [303]

Recital [re Order Overruling Motion to Set Aside the Verdict, etc.].

That said motion thereafter duly and regularly came on for hearing and the Court made an order herein overruling and denying said motion, to which ruling the defendant excepted and exception was allowed.

That thereafter judgment was entered upon each of said verdicts, which said judgments will more particularly appear from the records and files of the clerk of this court's office in the respective cases mentioned herein, and an exception was allowed defendant to the entry of said judgments and each of them. [304]

Certificate of Official Stenographer to Transcript of Testimony, etc.

I hereby certify that I was the Official Court Stenographer for the First Judicial Division, Territory of Alaska, at the time of the trial of the foregoing consolidated cases of the United States of America, Plaintiff vs. Thlinket Packing Company, a cor-

poration, Defendant, Nos. 1034-B, 1035-B & 1036-B, in the District Court for the District of Alaska, Division No. One; that as such official Stenographer I reported the proceedings on the trial of the said consolidated cases, and that the above and foregoing, consisting of pages 1 to 159, inclusive, is a full, true and correct transcript of the testimony and proceedings had and taken by me at the trial of said consolidated cases.

May 26, 1915.

H. F. BENSON,
Court Stenographer. [305]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

1034-B.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant,

1035-B.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corporation,
tion.

Defendant,

**Motion [for Order Settling and Allowing Bill of
Exceptions].**

The filing and presentation of the Bill of Exceptions herein having been by an order of this Court continued until this 14th day of June, A. D. 1915, and now, in furtherance of justice and that right may be done, the defendant presents the foregoing and hereto attached as its Bill of Exceptions in cases numbered 1034-B, 1035-B and 1036-B Consolidated, and prays that the same may be settled and allowed and signed and certified by the judge of this court as provided by law.

JNO. R. WINN and

WINN & BURTON,

Attorneys for Defendant. [306]

Copy of the foregoing Bill of Exceptions received and service admitted this 14th day of June, A. D. 1915.

JNO. J. REAGAN,

Asst. United States District Attorney for the First
Division at Juneau, Alaska, and Attorney for
Plaintiff. [307]

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 1034-B.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corporation,
Defendant.

No. 1035-B.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corporation,
Defendant.

No. 1036-B.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corporation,
Defendant.

**Order Settling and Allowing Bill of Exceptions and
Making Exhibits Part of Record.**

I, Robert W. Jennings, Judge of the above-entitled court, do hereby certify that the foregoing and above-entitled cases, numbered 1034-B, 1035-B

and 1036-B respectively, were, by an order of this Court, duly and regularly made, according to law, consolidated for the purpose of trial, and that the above and foregoing and hereto attached Bill of Exceptions was presented to me on the 17th day of June, 1915, within the time allowed by the order and rules of this court; and the same having been examined by counsel representing the respective parties, and by the court;

NOW, THEREFORE, I, Robert W. Jennings, Judge *of before* whom said consolidated cases were tried, do hereby settle and allow the same as a full true and correct Bill of Exceptions herein, and do order the same to be filed as and made a part of the [308] record herein; and I do further certify that the said Bill of Exceptions contains a full, true and correct transcript of all the testimony and evidence introduced or offered at or upon the trial of said cases as consolidated, and also the following:

(1) Objections filed herein made by the defendant company by its attorneys, M. G. Munly and Winn & Burton, to the introduction of any testimony or evidence pertaining to any of the charges made in any of the counts in said indictments, which said objections are set forth herein in full, and were made and filed after the selection and swearing in of the jurors to try said cause, and at the time and right after plaintiff had its first witness sworn to testify herein;

(2) The motion made for nonsuit by defendant at the time plaintiff rested its case;

(3) The instructions tendered and offered to the court by the defendant, and requested to be given to

the jury upon the submission of said case to the jury, which said instructions were filed herein on October 29, 1914, and numbered one to five inclusive, being the same instructions that are referred to in the Bill of Exceptions herein, which said defendant excepted to the refusal of the Court to give;

(4) The instructions given by the Court to the jury upon the final submission of said cause;

(5) Motion filed on January 28, 1915, by the defendant, through its attorneys, Winn & Burton, to set aside the verdict of the jury on the several indictments herein, and to treat the verdict as a verdict of acquittal;

(6) The motion for new trial filed herein on October 31, 1914, together with the affidavits in support thereof, [309] signed by J. R. Homer, Wallis George, Z. M. Bradford, D. W. Fales, Charles H. Hall, and A. A. Gabbs;

(7) The verdict of the jury rendered in each case; and

(8) The exhibits "A" & "B" offered upon the trial of said case so consolidated, all of which said last-mentioned proceedings, papers and exhibits are made part of the record herein.

DONE IN OPEN COURT this 23d day of June, A. D. 1915, in the presence of counsel for each party herein, and within the time allowed by the order, rules and practice of this Court.

ROBERT W. JENNINGS,
Judge.

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Jun. 17, 1915. J. W. Bell, Clerk. By J. J. Clarke, Deputy.

Signed and ordered to be marked refiled as of this date June 23, 1915.

ROBERT W. JENNINGS,

Judge.

Refiled in the District Court, District of Alaska, First Division. Jun, 23, 1915. J. W. Bell, Clerk. By J. J. Clarke, Deputy. [310]

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 1034-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant,

No. 1035-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant,

No. 1036-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THLINKET PACKING COMPANY, a Corpora-
tion,

Defendant.

Praeceptum for Transcript on Writ of Error.

To J. W. Bell, Esq., Clerk of the Above-entitled
Court:

Please prepare for the Thlinket Packing Company, the defendant in the above-entitled causes consolidated, for use by the United States Circuit Court of Appeals, Ninth Circuit, on the Writ of Error sued out and allowed herein on the 23d day of June, A. D. 1915, a transcript of the following papers on file in the above-entitled court in the above-entitled causes consolidated, and forward the same, together with the Bill of Exceptions herein, approved by the Judge of the above-entitled court on the 23d day of June, A. D. 1915, to the said Circuit Court of Appeals, Ninth Circuit, San Francisco, California, to wit:

1. The Indictment and Summons in cause No. 1034-B.
2. The Indictment and Summons in cause No. 1035-B. [311]
3. The Indictment and Summons in cause No. 1036-B.

4. Demurrer and Order overruling the same in cause No. 1034-B.
5. Demurrer and Order overruling the same in cause No. 1035-B.
6. Demurrer and Order overruling the same in cause No. 1036-B.
7. The Verdict in cause No. 1034-B.
8. The Verdict in cause No. 1035-B.
9. The Verdict in cause No. 1036-B.
10. The order overruling defendant's Motion filed herein on the 28th day of January, A. D. 1915, which said Motion was to set aside the verdict in each of said cases, or to consider the same in each of said cases as a verdict of acquittal.
11. The Order overruling Motion for New Trial herein in each of said causes No. 1034-B, 1035-B and 1036-B.
12. The Judgment rendered by the Court in 1034-B.
13. The Judgment rendered by the Court in 1035-B.
14. The Judgment rendered by the Court in 1036-B.
15. Motion to make certain exhibits part of the record on Writ of Error.
16. Assignments of error in cause No. 1034-B.
17. Assignments of error in cause No. 1035-B.
18. Assignments of error in cause No. 1036-B.
19. Petitions for Writ of Error in 1034-B, 1035-B and 1036-B.
20. Order allowing Writ of Error and settling amount of supersedeas bond in causes No 1034-B, 1035-B and 1036-B.

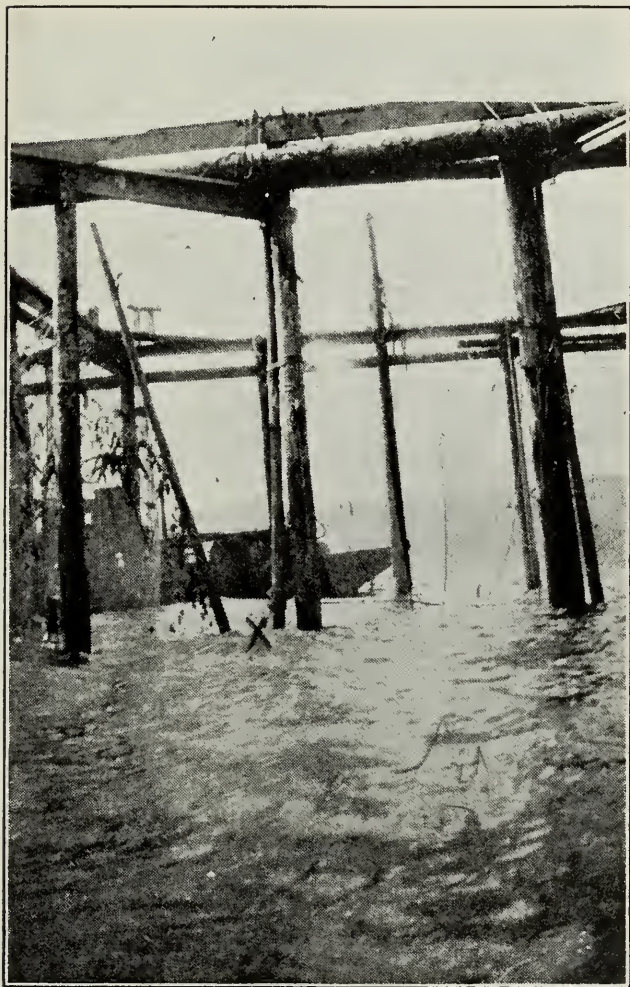
21. Original Writs of Error in causes No. 1034-B, 1035-B and 1036-B.
22. Original Citation in each of said causes No. 1034-B 1035-B and 1036-B.
23. Supersedeas bond in causes No. 1034-B, 1035-B and 1036-B.
24. Bill of Exceptions and Order allowing the same and making it a part of the record herein and this Praecipe.

WINN & BURTON,

Attorneys for Defendant, Thlinket Packing Company.

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Jun. 26, 1915. J. W. Bell, Clerk. By J. J. Clarke, Deputy. [312]

[Plaintiff's Exhibit "A"—Photograph.]



[Endorsed]: Plff's Exhibit "A." Received in Evidence Oct. 28, 1914, in Cases No. 1034-5 and Six. J. W. Bell, Clerk. By John Reed, Deputy. [313]

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[Certificate of Clerk U. S. District Court to
Transcript of Record.]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1034-A.

UNITED STATES OF AMERICA,
Plaintiff and Defendant in Error,
vs.

THLINKET PACKING COMPANY,
Defendant and Plaintiff in Error.

No. 1035-B.

UNITED STATES OF AMERICA,
Plaintiff and Defendant in Error,
vs.

THLINKET PACKING COMPANY,
Defendant and Plaintiff in Error.

No. 1036-B.

UNITED STATES OF AMERICA,
Plaintiff and Defendant in Error,
vs.

THLINKET PACKING COMPANY,
Defendant and Plaintiff in Error.

United States of America,
District of Alaska,
Division No. 1,—ss.

I, J. W. Bell, Clerk of the District Court for the
District of Alaska, Division Number One, do hereby
certify that the above and foregoing and hereto

annexed three hundred and fourteen pages of type-written and written matter numbered from 1 to 314, both inclusive, constitute a full, true and correct copy of the record, and the whole thereof, prepared in accordance with the praecipe of defendant and plaintiff in error; on file in my office and made a part hereof; in Causes Nos. 1034-B, 1035-B and 1036-B, Consolidated, wherein the United States of America is plaintiff and defendant in error, and Thlinket Packing Company, a corporation, is defendant and plaintiff in error.

I further certify that the said Record is by virtue of the Writ of Error and Citation issued in these causes, and the return thereof in accordance therewith.

I further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certificate, amounting to One Hundred forty-two and 40/100 Dollars (\$142.40), has been paid to me by plaintiff in error.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the above-entitled Court this 14th day of July, 1915.

[Seal]

J. W. BELL,

Clerk of the District Court, Dist. of Alaska, Division
No. 1.

[Endorsed]: No. 2623. United States Circuit Court of Appeals for the Ninth Circuit. Thlinket Packing Company, a Corporation, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writs

of Error to the United States District Court of the District of Alaska, Division No. 1.

Filed July 21, 1915.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

**[Motion and Stipulation for Order Consolidating
Causes for Hearing in Appellate Court.]**

*In the United States Circuit Court of Appeals,
Ninth Circuit, San Francisco, California.*

No. 2623.

THE THLINKET PACKING COMPANY,
Plaintiff in Error,
vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Come now Winn & Burton, attorneys for the Thlinket Packing Company, the above-named plaintiff in error, and move this Honorable Court to consolidate cases Nos. 1034-B 1035-B, and 1036-B of the District Court for the District of Alaska, Division No. 1, for hearing in this Honorable Court, which said cases have been docketed in this court as case No. 2623.

This motion is made and based upon the records and files in said last-numbered case and in this court.

WINN & BURTON,
Attorneys for Plaintiff in Error.

Copy of the above and foregoing received this 31st day of July, 1915, and service admitted.

JAMES A. SMISER,

U. S. Atty.

We also stipulate and agree that the above cases may be consolidated for hearing in the Circuit Court of Appeals for the Ninth Circuit, San Francisco.

JAMES A. SMISER,

U. S. Atty.

[Endorsed]: No. 2623. United States Court of Appeals for the Ninth Circuit. Thlinket Packing Company, a Corporation, vs. United States of America. Motion and Stipulation for Consolidation of Cases for Hearing and Determination. Filed Aug. 7, 1915. F. D. Monckton, Clerk.

**[Order Consolidating Causes for Hearing in
Appellate Court.]**

At a stated term, to wit, the October Term, A. D. 1914, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the ninth day of August, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable WILLIAM W. MORROW, Circuit Judge, Presiding; Honorable FRANK S. DIETRICH, District Judge; Honorable MAURICE T. DOOLING, District Judge.

No. 2623.

THLINKET PACKING COMPANY, a Corpora-
tion,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

ORDER CONSOLIDATING CAUSES FOR
HEARING AND DETERMINATION.

On consideration of the Motion of Messrs. Winn & Burton, counsel for the planitiff in error, filed August 7, 1915, to consolidate the three causes of the above title,—which said three causes were docketed in this court on July 21, 1915, as one cause, there being but one certified Transcript of the Record filed therein,—and pursuant to the stipulation of Mr. United States Attorney James A. Smizer, agreeing thereto, it is ORDERED that the said motion be, and hereby is, granted, and that the said three causes be and hereby are consolidated for hearing and determination on the said certified Transcript of the Record.

